



LawKa PaLa

Legal Journal on Burma

ISSN 1513-9174

No. 29 . April , 2008 .



Burma Lawyers' Council

LawKa PaLa

Legal Journal on Burma

BURMA LAWYERS' COUNCIL

Published by the *Burma Lawyers' Council*

Copyright *2008*

Cover and inside design & layout: *Than Nai Htwe*

Funded by: **Friedrich Naumann Stiftung (FNS)**

**WISDOM IS POWER TO TRANSFORM A SOCIETY INTO
A JUST, FREE, PEACEFUL AND DEVELOPED ONE**

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.

Suggestions, or contribution of articles, for Legal Journal on Burma are most welcome. Any enquiries regarding content or subscription should be directed to the Bangkok Office of the Burma Lawyers' Council.

Redistribution of all or part of any article in this journal is welcome, provided acknowledgement of the source is made. Notification of such use would be appreciated.

The BLC Publication Team

Contents

Part A: Referendum Issues	PAGE
(A.1) Statement Protesting the Unlawful Issuance by the SPDC of Temporary National Registration Cards for Voting in the Referendum	4
(A.2) Letter to ILO regarding Migrant Worker Voting in Referendum	5
(A.3) The Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, 2008	8
 Part B: Constitutional Issues	
(B.1) International Lawyers Denounce Attempt by Myanmar Regime to Give Themselves Immunity From Criminal Prosecution and Renew Call For Criminal Investigation	21
(B.2) The Burma Lawyers' Council Demands that the SPDC Officially Announce and Release their Confirmed Draft of the Constitution	23
 Part C: Rule of Law and Social Justice Issues	
(C.1) Accepting Statements made before Police or Military Intelligence in Court Violates the Principle of an Independent Judiciary	24
(C.2) Letter to Chief Justices regarding U Aung Toe	30
(C.3) Chief Justice under Attack and Independence of the Judiciary: What Lessons are there for Burma's Legal Profession?	33
(C.4) Analysis on the status of the economic, social, cultural and environmental rights of people in Burma (2007)	43
(C.5) Analysis on the September Uprising	49
 Part D: Criminal Accountability Issues	
(D.1) FIDH: Possible Crimes against humanity: prosecuting the Burmese military before the International Criminal Court (ICC)?	53
(D.2) BLC General Secretary Travels to London for Meetings on Criminal Accountability	57
(D.3) Memorandum of Understanding between BLC and ND-Burma	60
 Part E: Recent BLC Activities	
(E.1) A Brief Description of the Recent Work of the Legal Aid Section of the BLC	62
(E.2) Graduation Ceremony of the Advanced Internship Program in Human Rights and Law.	67



Part A: Referendum Issues

(A.1)

Statement protesting the unlawful issuance by the SPDC of temporary national registration cards for voting in the referendum

1. Casting a vote is a special right of a citizen. This right is clearly prescribed in Article 25 of the International Covenant on Civil and Political Rights. Government authorities have no right to permit unknown persons living inside Burma to vote. Under the 1974 National Referendum laws, only citizens of Burma could vote.

2. The rule restricting the right to vote to citizens was prescribed in Section 10, Chapter 2 of the 1947 Constitution. Similarly, Section 155 of the 1974 Constitution also provided that only citizens could vote. In Burma, citizenship is determined pursuant to the currently effective 1982 Burma Citizenship Act. A person who becomes a citizen according to this Act has the right to vote. All persons entitled to citizenship in accordance with the Burma Citizenship Act can enroll in the voting list. But issuing a temporary national registration card to unknown persons so that they can vote, without any legal support, is ignoring the law. Section 11(a) of the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, 2008, provides:

Every citizen, associate citizen, naturalized citizen and temporary certificate holder who has completed the age of eighteen years on the day of referendum shall have the right to vote at the referendum.

3. The Burma Lawyers' Council demands that the 2008 National Referendum Law be revised accordingly and the SPDC immediately stops making arrangements to issue temporary National Registration cards to those who may support the Constitution.

Date: 4 April 2008

* * * * *



(A.2)

Letter to ILO regarding Migrant Worker Voting in Referendum

April 10, 2008

Via E-Mail: ilo@ilo.org

Mr. Juan Somavia, Director-General
International Labour Organization
4 route des Morillons
CH-1211 Genève 22
Switzerland

Re: *Right of Burmese Migrant Workers to Vote in May 10, 2008 Referendum*

Dear Director-General Somavia:

This letter is to bring to your attention the recent Burmese law that excludes millions of Burmese migrant workers from voting during the upcoming May 10, 2008 Referendum on the Union of Myanmar Constitution (Draft).

In February 2008, the State Peace and Development Council, the ruling military regime in Burma, issued a Referendum Law that provides: "Every person who is included in the voting roll for the referendum is entitled to vote."¹ Section 11(d) adds: "The following persons shall not be included in the voting roll: ... (4) persons who are illegally abroad." Thus, millions of migrant workers who are residing abroad illegally will not be able to vote in the Referendum.

The migrant population abroad, particularly in Thailand, is significant. In 2004, 921,482 of the 1,280,053 migrant workers registered with the Thai Ministry of Labor were Burmese (71.9%). The Federation of Trade Unions – Burma (FTUB) Migrants Section has stated, however, that "many researchers believe the actual number of Burmese workers in Thailand is much higher than the number registered, with estimates frequently made in the range of 2 million."² Almost all of these workers are unskilled laborers who work in areas such as manufacturing, retail, domestic help and agriculture. The vast majority crossed the border in violation of applicable immigration laws. According to the Referendum Law, these workers will not have the right to vote on the country's Constitution, its most fundamental and essential document.

The status of Burmese migrant workers is not a matter of choice, but rather is the direct result of the SPDC's policies. First, there is no legal migration



system for these types of workers. Burma and Thailand have not adequately implemented the June 21, 2003 Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers.³ Second, the SPDC itself is largely to blame for the mass exodus of workers. Its economic policies have failed, it faces a host of international sanctions due to its continued human rights violations, and its economic system is rife with corruption, cronyism and instability. The poverty in Burma is well-recognized; Mr. Paulo Sérgio Pinheiro warned that Burma is characterized by “deep-rooted and worsening poverty, the continuing violation of economic rights and the lack of economic reform.”⁴ In 2004, the FTUB estimated that the average wage for a relatively unskilled laborer in Burma was approximately 14 to 22 baht per day, while that same worker can earn approximately 50 baht per day in Mae Sot, Thailand.⁵ People are starving in Burma and can earn more money in Thailand; it is only natural that they will do whatever it takes to feed their families.

Importantly, renowned Thai Professor Vitit Muntarbhorn has argued that Burmese migrants can legally work in Thailand under an exception provided in the immigration laws. Professor Muntarbhorn explains that “there is a key section — Section 17 — which provides the Minister of Interior with discretion in applying (or not applying) the strictures of the Immigration Act. This has provided a window for exempting irregular migrant workers from being deported, at least when they come out into the open to be registered.”⁶ In a 2007 meeting attended by the BLC General Secretary, ILO representatives stated that the ILO has adopted Professor Muntarbhorn’s position. The plain conclusion is that the migrant workers who have work permits are actually legal in Thailand, and thus should be able to vote in the Referendum.⁷

The right for citizens to vote is a fundamental right prescribed in Article 25 of the International Covenant on Civil and Political Rights. The Burma Lawyers’ Council urges the ILO to use its considerable leverage and international influence to ensure this right for the millions of Burmese migrant workers living abroad. Specifically, the BLC recommends that the ILO directly insist to the SPDC that all migrant workers be allowed to vote in the May 10 Referendum. Everyone’s voices must be heard in a free and fair Referendum.

(Endnotes)

¹ Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, 2008 (Law No 1/2008) (issued February 26, 2008).

² FTUB, “The Mekong Challenge, Working Day and Night, The Plight of Migrant Child Workers in Mae Sot, Thailand”, p.19 (published by the ILO, 2006).

³ In “The Mekong Challenge, Working Day and Night”, the FTUB affirms that full implementation of a Memorandum of Understanding between Thailand and Burma “offers one of the few clear paths to leverage increased protection for migrant workers.” (p. 17)



⁴ Smith, Dan, “Pinheiro Warns of Burma Humanitarian Crisis”, *The Irrawaddy*, February 24, 2006.

⁵ The Mekong Challenge, Working Day and Night, p.27.

⁶ Muntarbhorn, Vitit, “The Mekong Challenge — Employment and Protection of Migrant Workers in Thailand: National Laws/Practices versus International Labour Standards?” p. 13 (published by ILO, 2005). Section 17 of the 1979 Immigration Act provides: “In certain special cases, the Minister, with Cabinet approval, may permit any alien or any group of aliens to stay in the Kingdom under certain conditions, or may make conditions, or may consider exemption from conforming with this Act.”

⁷ The Burmese government will likely argue that the migrant workers violated Burmese immigration laws when they left Burma without a passport; thus, their compliance with Thai laws is irrelevant. However, there is no established procedure for these types of unskilled factory and farm migrant workers to enter Thailand legally. Thus, complying with Burmese laws would essentially mean never leaving Burma.

* * * * *



(A.3)

Reprinted from THE NEW LIGHT OF MYANMAR, Thursday, 28 February, 2008

**The Union of Myanmar
The State Peace and Development Council**

**The Referendum Law for the Approval of the
Draft Constitution of the Republic of the Union
of Myanmar, 2008**

**(The State Peace and Development Council Law No 1/2008)
The 5th Waning Day of Tabodwe 1369ME
(26th February, 2008)**

Preamble

The Commission for Drafting the State Constitution has drafted the State Constitution of the Republic of the Union of Myanmar leading to non-disintegration of the Union, non-disintegration of the national solidarity and perpetuation of sovereignty; building of the modern, developed and well-disciplined democratic State for which the entire people are longing; and for the long-term interest of all nationalities who are residing in the Union in accordance with the basic principles and detailed basic principles adopted by the National Convention.

The State Peace and Development Council hereby enacts the following Law to enable the adoption of the draft law drafted as such by the entire people through referendum.

**Chapter 1
Title and Definition**

1. This Law shall be called the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, 2008.
2. The following expressions contained in this Law shall have the meanings given here under:
 - (a) This Law means the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, 2008;
 - (b) Referendum means the Referendum held for enabling the approval of the draft State Constitution of the Republic of the Union of Myanmar;
 - (c) Commission means the Commission for Holding Referendum;



- (d) State or Divisional Sub-commission means the State or Divisional Sub-commission for Holding Referendum. The said expression also includes the Sub-commission of the Shan State(North), Shan State (East) and Bago Division (West);
- (e) District Sub-commission means the District Sub-commission for Holding Referendum;
- (f) Township Sub-commission means the Township Sub-commission for Holding Referendum;
- (g) Ward or Village-tract Sub-commission means Ward or Village-tract Sub-commission for Holding Referendum;
- (h) Citizen means the person who is already a citizen of the Union of Myanmar according to the existing law;
- (i) Member of religious order means:
 - (i) in the case of Buddhists, monks, novices, religious laymen and nuns;
Explanation: The expression, member of religious order, applies to a religious monk or a member of the religious order while he is serving temporarily as such;
 - (ii) in the case of Christians, persons who have been recognized and ordained or assigned duties by the relevant Churches as an individual who has dedicated himself mainly to serving the Christian religious order, persons included in the group of individuals or organization which of their own volition have submitted to the control of the respective head according to the religion professed as organized by religious discipline or vow;
 - (iii) in the case of Hindus, Sanyazi, Mahant or Hindu priest;
- (j) Referendum Area means ward of village-tract prescribed by the Commission to vote for holding referendum;
- (k) Voting roll means the roll of persons who are at the prescribed referendum areas and have the right to vote;
- (l) Polling Booth Team means the team appointed by the relevant Sub-commission for carrying out voting in collective responsibility at a polling booth;
- (m) Polling Booth Officer means the leader of the polling booth team appointed by the relevant Sub-commission;
- (n) Cancelled Vote means:
 - (1) the ballot paper of advance ballot paper which has no prescribed mark,
 - (2) the ballot paper or advance ballot paper scrutinised and decided by the polling booth team to be a fake ballot paper or advance ballot paper, and
 - (3) the ballot paper destroyed by any means and inserted in the ballot box.



Chapter II

Convening the Referendum

3. (a) The referendum shall be held for the approval of the draft constitution of the Republic of the Union of Myanmar;
- (b) The referendum shall be held completely within the period prescribed by the Commission.
4. (a) The Commission shall declare the day on which the referendum is to be held at least 21 days advance;
- (b) The Township Sub-commission and the Ward or Village-tract Sub-commissions shall declare the list of the persons who have the right to vote according to their referendum area for holding referendum at least 7 days in advance.

Chapter III

Formation of the Commission and Sub-commissions

5. (a) The State Peace and Development Council shall form a referendum commission for holding referendum with the necessary number of suitable citizens;
- (b) The commission formed under sub-section (a) shall form or may cause to be formed the following sub-commissions:
 - (1) a State or Divisional Sub-commission in a State or Division, comprising 15 members;
 - (2) a District Sub-commission in a district, comprising 15 members;
 - (3) a Township Sub-commission in a township, comprising 15 members;
 - (4) a Ward or Village-tract Sub-commission in a ward or village-tract, comprising 5 to 20 members.

Chapter IV

Duties and Powers of the Commission for Holding Referendum and Sub-commissions

6. The duties and powers of the Commission are as follows:
 - (a) holding referendum;
 - (b) forming, guiding and supervising the sub-commissions;
 - (c) determining and declaring the referendum areas for holding referendum;
 - (d) prescribing the period to hold referendum;
 - (e) guiding and supervising for preparation of list and schedule relating to holding referendum;
 - (f) prescribing the forms, seals, ballot papers and advance ballot papers to be used by the Commission and Sub-commissions for holding referendum;



- (g) issuing ballot papers and advance ballot papers to the respective District Sub-commission;
- (h) sending the advance ballot papers to the relevant head of embassy or consulate through the Ministry of Foreign Affairs to enable the persons who are abroad and having the right to vote, to cast vote;
- (i) declaring the number of person eligible to vote, persons who cast vote, persons who cast vote-in-favour and their comparison in percentage, reporting to the State Peace and Development Council after the referendum has been held;
- (j) carrying out other necessary matters relating to the referendum.

7. The Duties and powers of the State or Divisional Sub-commissions are as follows:

- (a) forming District Sub-commissions and Township Sub-commissions in accordance with the directive of the Commission;
- (b) supervising and coordinating the performance of the works of the District, Township and Wards or Village-tract Sub-commissions;
- (c) reporting the performance of the works of State and Divisional Sub-commissions to the Commission;
- (d) sending in advance to the Commission the lists of persons eligible to vote sent by the Township Sub-commissions according to the township;
- (e) sending the list to the Commission by preparing it in accordance with stipulations by differentiating the list of persons eligible to vote, persons who cast vote, votes-in-favor, votes-against and cancelled votes after collecting the number of votes sent by Township Sub-commissions after the referendum has been held.

8. The Duties and Powers of the District Sub-commissions are as follows:

- (a) requesting necessary for ballot papers and advance ballot papers for Township Sub-commissions from the Commission and distributing them sufficiently to Township Sub-commissions;
- (b) supervising and coordinating the performance of works of Townships Sub-commissions and Ward or Village-tract Sub-commissions;
- (c) carrying out in accordance with the directives of the Commission and State or Divisional Sub-commissions.

9. The Duties and Powers of Township Sub-commissions are as follows:

- (a) forming Ward or Village-tract Sub-commissions in accordance with the directive of the Commission;
- (b) supervising the referendum held in ward or village-tract;
- (c) declaring, adding, amending and approving the voting rolls according to the relevant referendum areas relating to the referendum, sending in advance of the approved list of persons eligible to vote to the relevant State or Divisional Sub-commission;



- (d) requesting necessary ballot papers and advance ballot papers for referendum areas in the township from the District Sub-commission and distributing them sufficiently to the Ward or Village-tract Sub-commissions according to referendum areas and the teams contained in clauses (2), (3), (4), (5) and (6) of sub-section (d) of section 12;
- (e) declaring the days to vote at the referendum areas in the township;
- (f) reporting the list to the State and Divisional Sub-commission after preparing it by differentiating the list of persons who cast vote, votes in-favour, votes-against and cancelled votes after collecting the number of votes sent by Ward or Village-tract Sub-commissions, and sending the copy to the Commission and relevant District Sub-commissions;
- (g) reporting the performance of the works of Township Sub-commission to District Sub-commission and sending the copy to the Commission and relevant State or Divisional Sub-commissions;
- (h) carrying out other necessary matters relating to the referendum.

10. The Duties and Powers of Ward or Village-tract Sub-commissions are as follows:

- (a) carrying out and taking responsibility for the referendum held in ward or village-tract;
- (b) submitting to the relevant Township Sub-commission for approval after preparing voting roll for referendum and declaring the approved voting roll in ward or village-tract;
- (c) declaring the polling booth areas and locations in ward or village-tract referendum area with the approval of Township Sub-commission and appointing members of polling booth team and polling booth officer;

Proviso: If any polling booth officer and member of polling booth team is unable to carry out the duty assigned for any reasons on the day of referendum, any suitable citizen who is respected by the local public may be assigned in substitution. Such assignment shall be reported to the Township Sub-commission.

- (d) distributing ballot papers and advance ballot papers obtained from Township Sub-commission to polling booth teams sufficiently;
- (e) making ballot boxes in accordance with the stipulations;
- (f) opening ballot boxes of each polling booth at the said polling booth and supervising in counting votes;
- (g) sending list to Township Sub-commission after preparing it in accordance with stipulations by differentiating list of persons who cast vote, votes-in-favour, votes-against, cancelled votes, ballot paper and advance ballot paper received, remaining ballot papers and advance ballot papers;



- (h) reporting the performance of the works of Ward or Village-tract Sub-commission to Township Sub-commission;
- (i) carrying out other necessary matters relating to the referendum.

Chapter V

Preparing Voting Rolls

11. (a) Every citizen, associate citizen, naturalized citizen and temporary certificate holder who has completed the age of eighteen years on the day of referendum shall have the right to vote at the referendum. Every person who is so entitled to vote shall be mentioned in the voting roll.
- (b) The names of the following persons who are in conformity with the provisions contained in sub-section (a) are entitled to be mentioned in the voting roll:
- (1) the diplomats, diplomatic staff, consular staff of the Union of Myanmar and members of their household;
 - (2) members of army, navy or air force of Tatmadaw who are out of referendum area on duty on the day of referendum although they live within military unit, and members of their household living together with them;
 - (3) persons who are appointed by the Government to carry out duties outside the Union of Myanmar and members of their household;
 - (4) State scholars who are abroad and members of their household living together with them;
 - (5) other persons who are abroad with the permission of the Government;
 - (6) students who are studying at various universities, degree colleges, colleges, institutes and schools;

Explanation: University, degree-college, college, institute and school means the universities, degree-colleges, colleges, institutes and schools opened or recognized by the Government for study by students. The said expression includes vocational schools, social welfare schools and homes or universities or schools established by the Tatmadaw. Among the students studying at universities, degree-colleges, colleges, institutes and schools, students who come from other region and are studying there other than students who are included in voting roll of the area where the relevant university, degree-college, college, institute and school is established, are entitled to vote in accordance with the provisions of this Law.

- (7) persons who are taking medical treatment as in-patient in hospital and service personnel who are on duty;



- (8) persons who are at the worksite of other region, having left their base camp, under the assignment of any Government department or organization;
 - (9) detainees in custody of police station or prisons;
 - (c) In preparing the voting roll, temporary workers who come from referendum area of permanent residence to other referendum area individually or in group until the day of referendum is over, they may be included in the voting roll of the referendum area where they are now present. The relevant Township Sub-commission shall be informed to cancel the list of the names of such persons from the voting roll of the referendum area where they originally resided.
 - (d) The following persons shall not be included in the voting roll:
 - (1) members of religious orders;
 - (2) persons who have been adjudged to be of unsound mind as provided for in the relevant law;
 - (3) persons serving prison terms, having been convicted under order or sentence of a court for any offence;
 - (4) persons who are illegally abroad;
 - (5) foreigners.
12. (a) The voting roll shall be prepared by the Ward or Village-tract Sub-commissions according to their ward or village-tract.
- (b) The Ward or Village-tract Sub-commissions shall include the name of every eligible voter who lives in their ward or village-tract under sub-section (a) of section 11 in the voting roll.
 - (c) In preparing voting roll under sub-section (a), the names of persons mentioned in sub-section (b) of section 11 shall not be included in the voting roll of Ward or Village-tract where they reside. If it is included in that voting roll, the name of such person shall be removed from the voting roll.
 - (d) In preparing the voting roll for the persons included in sub-section (b) of section 11, the following teams formed with suitable number of members as directed by the Commission shall prepare it:
 - (1) for the persons who are abroad and eligible to vote and members of their household living with them, head of the relevant embassy and team or head of consulate and team;
 - (2) for the members of army, navy, air force of Tatmadaw who are out of referendum area on duty on the day of referendum although they reside in military unit and members of their household living together with them, relevant commanding office and team;
 - (3) for the students who are studying at various universities, degree-colleges, colleges, institutes and schools, rector of the university and



- team if it is the university; principal and team, if it is the degree-college and college; principal and team, if it is the institute and school; head of such school and team, if it is the school for social welfare; head of the school and team, if it is the home, head of the home;
- (4) for persons taking medical treatments as in-patient in hospital and service personnel who are on duty, medical superintendent of the hospital and team;
 - (5) for the persons who are at the work-site of other region, having left their base camp, under the assignment of any Government department or organization, head of such worksite and team;
 - (6) for detainees in custody of police station, officer-in-charge of relevant police station and team, for detainees in prison, warden and team.
- (e) in preparing voting roll for members of army, navy and air force of Tatmadaw who are eligible to vote under sub-section (a) of section 11 and members of their household, Ward or Village-tract Sub-commission shall carry out as follows:
- (1) including the names of members of army, navy and air force of Tatmadaw who reside at the regiments, military units, military commands based within their relevant Ward or Village-tract and members of their household with the help of relevant commanding officer;
 - (2) including the names of members of army, navy and air force of Tatmadaw who are out of relevant military unit and the names of members of their household living together with them, in the voting roll of referendum area where they reside.
13. (a) The Ward or Village-tract Sub-commissions shall carry out inspection, declaration, amending and adding to the voting roll. However, in respect of amending, adding to the voting roll, the approval of the relevant Township Sub-commission shall be obtained.
- (b) The teams formed under sub-section (d) of Section 12 shall carry out inspection, declaration, amending, adding and approving the voting roll like the Ward or Village-tract Sub-commissions. If dispute arises relating to voting-roll, approval shall be obtained, for the team formed under clauses (1) and (2) of sub-section (d) of section 12, from the Commission, and for other teams, from their relevant Township Sub commission. The decision of the Commission and Township Sub-commission shall be final and conclusive.



Chapter VI

Voting

14. (a) Every person who is included in the voting roll for the referendum is entitled to vote.
- (b) The person who is entitled to vote shall cast vote only at the polling booth of the referendum area in which his name is included.
15. Stipulated ballot box shall be placed at a conspicuous place for public to enable voters to cast vote conveniently at every polling booth where referendum is to be held.
16. A person who is entitled to vote shall have the right to vote only once at the referendum.
17. A person eligible to vote shall obtain the ballot paper from Polling Booth Officer or person assigned by Polling Booth Officer, express his wish secretly at the stipulated place in the polling booth and put it into the ballot box.
18. The persons eligible to vote who are abroad, and persons who are to travel out of the referendum area where they reside on the day referendum is held are entitled to vote with advance ballot paper in accordance with the stipulations.
19. The manner of voting for the persons mentioned in sub-section (b) of section 11 shall be as stipulated in the Rules made under this Law.

Chapter VII

Postponing and Dissolving of Voting

20. (a) The relevant Township Sub-commission may postpone once to a suitable date for enabling voting at all polling booths or some polling booths or a polling booth within the stipulated period under sub-section
- (d) of section 6, if free and fair referendum may not be held stably due to natural disaster or situation affecting the security or any other disaster. In addition, polling booths may be immediately transferred to a place it deems appropriate. Such postponement and transfer shall be submitted to District Sub-commission and the copy shall be submitted to the Commission and relevant State or Divisional Sub-commissions.
- (b) If the persons eligible to vote are unable to vote at any polling booth on stipulated day to vote due to any reasons contained in sub-section (a), the Polling Booth Team shall declare postponement of voting. If it is postponed while being voted, Polling Booth Team shall close the ballot



- box in the presence of 5 persons eligible to vote and such process of the event shall be submitted immediately to respective the Ward or Village-tract Sub-commission. Such Sub-commission shall report to Township Sub-commission with its recommendation.
- (c) The Ward or Village-tract Sub-commission shall determine and declare a day within the stipulated period under sub-section (d) of section 6 and venue for casting vote by remaining persons eligible to vote at the polling booth declared for postponement.
 - (d) New ballot box shall be used for voting on the day postponed.
21. (a) If situation arises to dissolve voting for referendum due to any reasons contained in section 20, the Ward or Village-tract Sub-commission may dissolve some polling booths or all polling booths within its referendum area. If such situation arises, the Ward or Village-tract Sub-commission shall submit its performance immediately to the relevant Township Sub-commission.
- (b) The Township Sub-commission shall report the submission of Ward or Village-tract Sub-commission under sub-section (a), to District Sub-commission with its recommendation immediately and send the copy to Commission and relevant State or Divisional Sub-commissions.
 - (c) If situation arises to dissolve voting of referendum due to any reasons contained in section 20, the Township Sub-commission may dissolve a referendum area or up to the half of all stipulated referendum areas in its Township. If situation arises to dissolve over half of all referendum areas, the Township Sub-commission shall report to the relevant District Sub-commission and State or Divisional Sub-commission immediately with its recommendation.
 - (d) The State or Divisional Sub-commission shall give decision on the submission of Township Sub-commission under sub-section (c). Such decision shall be final and conclusive. The State or Divisional Sub-commission shall report such decision for dissolution to the Commission and send the copy to relevant District Sub-commissions and Township Sub-commissions.

Chapter VIII

Counting of Votes

22. (a) The polling booth team, immediately after closing the polling booth, shall:
- (1) inspect the ballot boxes in the presence of not less than ten persons eligible to vote, open such ballot boxes and count the votes. In so counting, votes-in-favour, votes-against and cancelled votes shall be differentiated and counted;
 - (2) continue to obtain the votes from remaining eligible voters in the post-



- poned date under sub-section (c) of section 20. Only after closing such polling booth, votes from such polling booth shall be counted by adding the votes from the ballot boxes closed securely under sub-section (b) of section 20;
- (3) count only the votes in the ballot boxes closed securely under sub-section (b) of section 20, if voting is unable to be held also on the postponed date under sub-section (c) of section 20;
 - (4) prepare separately the list of voters contained in voting roll, votes in favour, votes against, cancelled votes, ballot papers received and remaining ballot papers and send to the Ward or Village-tract Sub Commission in conformity with clause (1).
- (b) The Ward or Village-tract Sub-Commission shall collect the lists sent under clause (4) of sub-section (a) according to polling booth, prepare combined list, and advance ballot papers received and send to relevant Township Sub-commission with report.
- (c) The Township Sub-commission shall send combined list to State or Divisional Sub-commission with report of:
- (1) the lists collected and prepared according to the Ward or Village-tract sent by Ward or Village-tract Sub-commissions under sub-section (b);
 - (2) the lists obtained after counting advance ballot papers sent by teams formed under clauses (2), (3), (4), (5) and (6) of sub-section (d) of section 12 and advance ballot papers sent by Ward or Village-tract Sub-commissions and lists contained in clause (1). Such Copy shall be sent to the Commission and relevant District Sub-commissions.
- (d) The State or Divisional Sub-commission shall collect and send the voting lists sent by the Township Sub-commissions under sub-section (c) to the Commission.
- (e) The Commission shall count the advance ballot papers sent by teams formed under clause (1) of sub-section (d) of section 12 after differentiating votes in favour, votes against and cancelled votes.

Chapter IX

Declaring Votes

23. The Commission shall, after holding the referendum, combine the lists of advance ballot papers submitted by the State or Divisional Sub-commissions under sub-section (d) of section 22 and lists of advance ballot papers counted by the Commission under sub-section (e) of section 22, declare the number of eligible voters, number of voters in favour and the comparison of them in percentage.



Chapter X

Prohibition and Penalty

24. In respect of the referendum, no one shall do any of the following:
- (a) voting more than once;
 - (b) possessing the fake ballot paper or fake advance ballot paper;
 - (c) destroying the ballot paper or advance ballot paper;
 - (d) taking away the ballot paper outside the polling booth;
 - (e) opening the ballot box without authority, destroying or affecting it in any other manner;
 - (f) destroying the polling booth;
 - (g) making or destroying intentionally the lists, notices or other documents issued by the Commission and Sub-commission so as to be unable to be read;
 - (h) lecturing, distributing papers, using posters or disturbing the voting in any other manner in the polling booth or on the premises of polling booth or at the public or private place to destroy the referendum.

25. Whoever violates any prohibition contained in section 24, attempts to violates as such, commit any criminal act by conspiring to violate or abet in violation, shall, on conviction, be punished with imprisonment not exceeding 3 years or with a fine not exceeding one hundred thousand kyats or, with both.

Chapter XI

Obtaining Financial and Staff Assistance

26. (a) The Commission shall:
- (1) submit and request the State Peace and Development Council by calculating the estimated expenditure for holding referendum and expend;
 - (2) allocate, as appropriate, out of the fund requested and obtained under clause (1) to the Sub-commissions.
- (b) The Sub-commissions shall:
- (1) expend the fund allocated by the Commission under sub-section (a) as directed by the Commission and keep the accounts systematically;
 - (2) send their balance statements of accounts to the Commission after holding the referendum.

27. The Commission may co-ordinate and obtain necessary staff and material assistance for the Commission and Sub-commissions from the ministries and organizations.



Chapter XII

Miscellaneous

28. The Commission shall submit the report to the State Peace and Development Council after declaring the situation of the vote obtained under section 23.

29. (a) If the office of the member of the Commission becomes vacant for any reason, the State Peace and Development Council may substitute and appoint a member for such office;

(b) If the office of the member of any Sub-commission becomes vacant for any reason, the following Commission or Sub-commissions may substitute and appoint:

(1) if it is the post of the member of State or Divisional Sub-commissions, the Commission;

(2) if it is the post of the member of District Sub-commission, relevant State or Divisional Sub-commission;

(3) if it is the post of the member of the Township Sub-commission, relevant State or Divisional Sub-commission;

(4) if it is the post of the member of Ward or Village-tract Sub-commission, relevant Township Sub-commission.

(c) The performance of the Commission or Sub-commission shall not be invalidated due to vacancy of the post of the member of the Commission and Sub-commission.

30. For the purpose of implementing the provisions of this Law, the State Peace and Development Council may make such Rules as may be necessary.

31. The Commission may without contravening to the provisions of this Law or Rules made hereunder issue such notifications, orders and directives as may be necessary without.

Sd./ (Than Shwe)
Senior General Chairman
The State Peace and Development Council

* * * * *



Part B: Constitutional Issues

(B.1)



**Global
Justice Center**
Human Rights Through the Rule of Law



April 14, 2008

FOR IMMEDIATE RELEASE

Contact: Janet Benshoof, Esq.
Htoo Tel: 212-725-6530 x202
533 0605 Cell: 917-601-6200
burma.org Website: www.globaljusticecenter.net
blcsan@ksc.th.com Email: jbenshoof@globaljusticecenter.net

Contact: U Aung
Cell: 66 (0) 81
Website: www.blc-burmalawyers.org
Email:

INTERNATIONAL LAWYERS DENOUNCE ATTEMPT BY MYANMAR REGIME TO GIVE THEMSELVES IMMUNITY FROM CRIMINAL PROSECUTIONS AND RENEW CALL FOR CRIMINAL INVESTIGATION

The Myanmar regime, guilty of the most serious crimes of concern to the international community, has revealed that it is seeking to give itself constitutional immunity from prosecution for those crimes. The Burma Lawyers' Council, the Global Justice Center and the Burma Justice Committee denounce this attempt by the regime to avoid accountability. The recently distributed final version of the Constitution being put to a "referendum" on May 10th, 2008 now includes in Chapter XIV "Transitory Provisions," Article No. 445, stating, "No legal action shall be taken against those (either individuals or groups who are members of SLORC and SPDC) who officially carried out their duties according to their responsibilities." This immunity is invalid under international law and cannot be accepted by the international community.

There is ample evidence that the military regime has committed war crimes, crimes against humanity and potentially even genocide through forced relocation, torture, rape, enforced disappearances and extermination. Perpetrators of these, the most serious of crimes, are not eligible for amnesty under international law. Moreover, the global community has a commitment under the Responsibility to Protect Doctrine, Security Council Resolution 1325 on women, peace and



security and Resolution 1674 on the protection of civilians in armed conflict, to hold the regime accountable for the crimes committed against the people of Burma. In seeking an amnesty, the military regime recognizes that it has committed serious crimes and needs amnesty for what it has done and is doing. The regime cannot, however, simply give itself immunity as it is seeking to do.

The constitutional amnesty is another example of how the regime abuses the law as it seeks to solidify the military's rule of oppression through a façade of legality. As stated by U Aung Htoo, Secretary General of the Burma Lawyers' Council "Rule of law must replace military might. This Constitution and its illegal amnesty provision cannot bring sustainable peace to Burma."

The Burma Lawyers' Council, Global Justice Center and Burma Justice Committee therefore today make clear:

1. The military regime must immediately desist from committing further crimes against the people of Burma;
2. The military regime's constitutional process and intended amnesty fails to comply with any of the applicable international legal norms and will not have any force as a matter of law either internationally or for the future within Burma; and
3. As a matter of international law, the U.N. Security Council should create an Independent Commission of Inquiry to investigate the crimes and pursue criminal accountability of those members of the military regime who have committed international crimes.

###

For further information contact:

Janet Benshoof, President, Global Justice Center, 212-725-6530 x202

U Aung Htoo, General Secretary, Burma Lawyers' Council, 66-(0) 81-533-0605

Sappho Dias, Chairman, Burma Justice Committee, 44-78-81-826373

* * * * *



(B.2)

The Burma Lawyers' Council demands that the SPDC officially announce and release their confirmed Draft of the Constitution

1. Little more than one month remains before the referendum on the Constitution (Draft) of the Union of Burma, based on the principles adopted by the SPDC National Convention, is to be held in May 2008. The people will only be able to vote for or against the Constitution (Draft) after they have had an opportunity to study it. Thus, the SPDC has the duty to promptly distribute their Constitution (Draft) to the people.

2. During the last week of March, a copy of the Constitution (Draft) under the nation's logo was circulated inside and outside of Burma. But an investigation into the true source of this copy has had no definite results. It appears to be an actual announcement of the SPDC because it is systematically categorized, the design is clear, the introduction and the logos are complete, and the words are neatly printed.

3. A comparison between the "Fundamental Principles and Detailed Basic Principles" adopted by the National Convention and the circulated copy of the Constitution (Draft) reveal some important differences. Some of these differences will worsen the nation's conditions and situation. For example, according to the circulated copy of the Constitution (Draft), certain provisions of the Constitution can only be amended through a referendum in which all eligible voters approve the amendment (in addition to 75% of the members of Parliament). The Constitutional Principles of the National Convention, on the other hand, only required a majority of eligible voters to approve a constitutional amendment of these provisions. If this Constitution (Draft) were to be released by an NGO or other opposition organization to be considered by the public, the SPDC would deny that it is their legal announcement and thus embarrass the organization that released it. It will harm the people of Burma if they cannot thoroughly examine the Constitution (Draft) now, before they vote.

4. Accordingly, we demand that the SPDC, or the Constitutional Drafting Commission formed by SPDC, promptly announce and release to the public the confirmed Constitution (Draft).

Date: 1 April 2008

* * * * *



Part C: Rule of Law and Social Justice Issues

(C.1)

DEMANDING JUSTICE

1. An essential part of justice is finding the truth. Only with the truth can a fair and just decision be made according to the law. Justice cannot be attained if it is based on untrue facts. The main duties of judges are to reveal the truth, ensure that proper evidence is admitted, and obtain authentic testimonials in court. The courts play an important role in revealing true and complete evidence and developing facts during the hearing of a case. By weighing the submitted evidence and facts, a court can see more clearly how the case should be decided in accordance with the law. Thus, the evidence and facts are essential to the proper functioning of the judiciary.

2. The judicial rules in Burma have completely changed. Before the announcement of the ruling in the “Union of Burma vs. U Ye Naung and 2”, statements made before the police or military intelligence were not accepted as evidence in court. But in order to easily put opponents in prison, the court that issued the U Ye Naung ruling accepted the statements made before the police or military intelligence as admissible evidence. With a clear bias for the military regime’s wishes, opposition members have been imprisoned with reference to this ruling, which violates the applicable law. The judges themselves were violating the law and thus destroying the rule of law foundation.

These violations can be seen clearly in the following legal analysis statement.



LEGAL ANALYSIS STATEMENT

ACCEPTING STATEMENTS MADE BEFORE POLICE OR MILITARY INTELLIGENCE IN COURT VIOLATES THE PRINCIPLE OF AN INDEPENDENT JUDICIARY

1. The Union Judiciary Act, Burma Code, Vol. 1, p. 182 and 1950 Burma Code, Vol. 1, p. 198, were prescribed to establish an “independent judiciary” in Burma. There were opportunities to implement an independent judiciary. These Acts were withdrawn, however, by the Burmese Socialist Program Party government on 26 January 1974 under Law No. (13/74) of the Council of People’s Justices. As a result, the independent judiciary disappeared.

More recently, the SPDC military regime announced Judiciary Law (Law No. 5/2000) on 27 June 2000. An “Independent Judiciary according to the Law” was prescribed in Chapter 2, Section (2)(a) of this law. But the case of “Union of Burma vs. U Ye Naung and 2” is neither in accordance with the prescribed laws nor with an independent judiciary, and thus violates the basic principles of the judiciary. It strongly attacks and endangers the independent judiciary.

2. “Union of Burma vs. U Ye Naung and 2”, 1991 Burma Ruling, p. 63 (Full Bench)

In this ruling, the Supreme Court of Burma first completely acquitted the defendants based on Evidence Act Section 24. A Special Appeal in front of the full bench of the Supreme Court was made as a result of Chief Justice U Aung Toe’s decision to review the case in accordance with Investigation Procedure Paragraph 17 of Special Appeals Procedures by the Chief Court Plenary Bench, as issued by the Office of the Attorney General. The acquittal order for the U Ye Naung case was issued on 13 January 1989. The procedural rules for special appeal with the Plenary Bench were issued on 10 December 1989.

Re-examining a case in which the defendants were acquitted on 13 January 1989 with the procedure of Special Appeal of Plenary Bench issued on 10 December 1989 clearly violates the basic judicial principle that laws “must not have retroactive effect”. The year of this ruling was definitely 1991 (“1991 Burma Ruling, p. 63 (Full Bench)”). This retroactive effect breaches fundamental



legal principles and thus violates the law. Eventually, there will be no independent judiciary.

3. The decision of “Union of Burma vs. U Ye Naung and 2” provided that the statements made by the defendants in front of the military intelligence did not clearly indicate that there was persuasion, threatening, or promising involved, as mentioned in Evidence Act Section 24, and so there was no reason to reject the statement.

If the defendants were obliged to make the statements due to the military intelligence’s persuading, threatening or promising, under Evidence Act Section 24 the government clearly could not use the statements as evidence in court. The Director of the Attorney General’s Office, however, agreed to make a Special Appeal which resulted in the two defendants being found guilty and punished.

The declarations made before the military intelligence officers were used to convict the defendants. The following rulings show clearly that the judge’s decision to admit the declarations was incorrect.

- The case of “U Sein Tun and Union of Socialist Republic of Burma”, 1980 ruling of Ma Ta Sa (Central Court), page 13, states that a statement made in front of investigation personnel cannot be used as evidence in examination of a witness or defendant, as is prescribed in Criminal Procedure Section 162.
- In the case of “U Min and the Union of Socialist Republic of Burma”, the police summoned U Min, handed him over to Kha La Ra (62) and began an investigation into his activities by the order of Army Sergeant Kyaw Sein. U Min’s confession was not given in front of the judge but rather was made in the police detention center. Therefore, this confession cannot be used as evidence according to Evidence Act Section 26. This ruling was stated on page 22 of 1977 Ma Ta Sa (Central Court).

4. By making a Special Appeal that argued that the defendants did not clearly show persuading, threatening or promising during the interrogation, the Office of the Attorney General was asking for the high court to apply the Special Appeal law retroactively.

The Evidence Act does not provide that the defendants have the burden of proof to present the persuading, threatening or promising by the police or military intelligence as evidence. Evidence Act Section 102 provides that the prosecutor always has the burden of proof in criminal cases.



- “Mg Yay and Ma Mae Htin” (1962 Ma Ta Sa – Chief Court - 304)
- “Kamalar Sen and U C Paul (1970 Ma Ta Sa – Chief Court - 116)
- All precedence has followed the principle of Evidence Act Section 102.

5. It was not proper to present the evidence of the declarations since they are inadmissible under the Criminal Procedure Code and Evidence Act. They cannot be admissible by force. In Evidence Act Section 4, “shall presume” means “whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.” The court was wrong to presume that the Attorney General’s argument that the defendants could not present evidence regarding the persuading was true. The law provides protection against this type of argument made by the prosecutor.

Evidence Act Sections 24 - 30 provide the circumstances under which a confession of a defendant can be used as evidence. In Evidence Act Section 26, it is clearly prescribed that the confession of the defendant in a police detention center cannot be used as evidence.

In recent interrogations, not only ordinary threats but also life-endangering conditions are used by the Director General of People’s Force and in the military investigation centers. Examples of this can be seen below.

- Ko Aung Hlaing Win of Kamaryut Township, Rangoon Division, was beaten to death and seven of his ribs were broken into pieces while being interrogated in the military interrogation center.
- Ma Nyo Kyi (age 28), mother of an eight-month old child, from Yaytarshay Township, Pegu Division, was tortured to death in Myohla Police Station on 18 July 2006 at 14:30 hours.
- Ko Myint Thein of Maubin Township, Irrawaddy Division, was called to the Pantanaw Police Station to check a guest list and was murdered there.

From these examples, it is obvious that government interrogators not only resort to ordinary threats, but also murder, when interrogating defendants.

6. There are regulations for the police officers and military intelligence to prevent them from using shortcuts when investigating a crime and to stop them from abusing their power when the defendant is in their custody. For example, Criminal Procedure Section 162(1) provides: “An interview given in front of the police cannot be used as evidence”. Criminal Procedure Section 343 provides: “An authority’s power cannot be used to persuade the defendant to produce a statement”. Also, Criminal Procedure Sections 164 and 364 provide



a procedure for documenting a confession in writing when it is made before a judge, in order to avoid an appearance of persuading, threatening or promising.

Evidence Act Section 26 requires that “the defendant cannot be sentenced with a confession made in front of a military officer during police detention”. The examples of this ruling can be seen in the following cases:

- “Mg Thein vs. Union of Burma” - 1966 Ruling - page 158
- “Mg Myint vs. Naingantaw” - Volume II, Rangoon – 31
- “Mg Pein vs. Union of Burma” - 1953 Burma Ruling (Chief Court of Justice)

7. According to the Criminal Procedure Code, all investigations must be done by police officers. Nowadays, investigations are not made in the police station anymore, but rather are handled by military intelligence. The investigation documents are then handed over to the police. At no time have courts ever accepted these as official documents legally admissible as evidence. There is no precedence for using these documents as evidence.

In the U Ye Naung case, Chief Justice U Aung Toe based the ruling on evidence that did not comply with the Evidence Act and Criminal Procedure Code. He abused his power to satisfy the military regime. Due to the precedence that this case and other subsequent cases set, the courts will have to allow confessions made in front of the police or military intelligence as evidence. Other cases have been investigated and adjudged referring to this ruling. The police documents have now become evidence in judicial proceedings. The pleaders, lawyers and counsels are failing to function independently, according to the law. Justice and independence have vanished. The following cases have been adjudged referring to this ruling:

- Deputy Constable Than Win vs. Zanimarbiwuntha (a) Soe Thein and 23. 84/2003 – Mandalay Division Court
- Constable Mg Than vs. Khaymarsarya (a) Kyaw Shein and 23. – 86/2003 – Mandalay District Court
- Deputy Constable Ye Nyunt vs. Yi Yi Win and 3 – 74/2004 – Western Division Court (Rangoon)
- Deputy Constable Hla Myint vs. U Aye Kyu and 4 - 23/2000 – Rangoon Division Additional (4)
- Deputy Constable Ye Nyunt vs. Aung Gyi and 2 – 1347/2004 – Insein Prison Special Court

(These cases were received from Assistance Association for Political Prisoners – AAPP.)



All of these cases were adjudged by referring to the U Ye Naung ruling and thus also ignored the applicable laws, were investigated unjustly and unjustifiably punished defendants.

The Chief Justice of the Supreme Court, U Aung Toe, has to obey natural law and the role of the judiciary. Ordering the use of the statements made in front of the military intelligence as evidence in the court and the subsequent judgment is truly a black spot in the history of the Burmese judicial system. The judges in effect have lost their neutrality; they have become joint or additional parties in the abuse cases committed by the military intelligence and the police. The independent judiciary has deteriorated. This ruling shows that the judiciary is clearly biased in favor of the military administration.

8. The 6th Conference of the Chief Justices of Asia and the Pacific, held in Beijing, China in 1995, issued a “Statement of Principles of the Independence of the Judiciary”. The Chief Justice of the Supreme Court of Burma, U Aung Toe, attended the conference and signed this statement. According to this statement, “the Judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source”. The judiciary must be totally absent of any biases.

Now, U Aung Toe himself has violated the Criminal Procedure Code and Evidence Act by issuing the ruling of “Union of Burma vs. U Ye Naung and 2”. The ruling is based on the confessions made in front of the military intelligence and police. This is an attack on the entire independence of the judiciary. It is also a breach of the Beijing Statement that U Aung Toe signed. Although the U Ye Naung ruling was issued before the Beijing Conference, the legal principles that it established have been followed in numerous cases (listed above) decided after the date of the Conference. To fulfill his commitment to the Beijing Principles, U Aung Toe has a duty to vacate the U Ye Naung ruling and all the cases that relied on it.

The Burma Lawyers’ Council demands that the Chief Justices of the Asia and Pacific regions hold Chief Justice U Aung Toe accountable to the Principles to which he agreed. Those who implement justice issue this notice to assist in the development of an independent judiciary.

Date: 25 March 2008

* * * * *



(C.2)

Letter to Chief Justices regarding U Aung Toe

April 10, 2008

To: The Hon. Anthony Murray Gleeson
Chief Justice of the High Court of Australia
P.O. Box 6309
KINGSTON
Canberra, Australian Capital Territory, 2604
Australia

CC: Chief Justices of Bangladesh, People's Republic of China, Hong Kong, India, Indonesia, Republic of Korea, Mongolia, Nepal, New Caledonia, New Zealand, Pakistan, Papua New Guinea, Philippines, Singapore, Sri Lanka, Vanuatu, Vietnam, Western Samoa

Re: *Violation of Statement of Principles of the Independence of the Judiciary by the Honorable U Aung Toe, Chief Justice of the Supreme Court of The Union of Myanmar (Burma)*

Dear Chief Justice Gleeson:

This letter is to inform you that the Honorable U Aung Toe, Chief Justice of the Supreme Court of The Union of Myanmar (Burma), has violated the Statement of Principles of the Independence of the Judiciary that he signed with the Chief Justices of Asia and the Pacific on August 19, 1995 in Beijing, China. We, the Burma Lawyers' Council, urge you to hold him accountable for his actions. Specifically, we ask you to call upon the Honorable U Aung Toe to resign from his post as the Chief Justice of the Supreme Court.

As you know, the Beijing Principles provide that an independent judiciary is indispensable to implementing the right to a fair and public hearing by a competent, independent and impartial tribunal, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. (Section 2 of the Beijing Statement) Independence of the Judiciary requires that "the Judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law *without improper influences*, direct or indirect, from any source." (Section 3(a)) The objectives and functions of the Judiciary include: "(a) to ensure that all persons are able to live securely under the Rule of Law; (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and (c) to administer the law impartially among persons and between persons and the State." (Section 10) The Burma Lawyers' Council agrees wholeheartedly with these Principles and has been working for over 14 years to implement them in Burma. Lamentably, the Burmese judiciary still completely lacks independence from the military government.



By signing the Beijing Statement, the Honorable U Aung Toe bound himself to the Beijing Principles.¹ Yet the reality is that in rulings in which he was personally involved, the Honorable U Aung Toe has failed to put into practice the judicial independence he claims to support. For instance, in *Union of Burma vs. U Ye Naung and 2*, 1991 Burma Ruling, p. 63 (full bench), at the insistence of the Attorney General's Office, the Honorable U Aung Toe (1) ignored well-established precedence, the Evidence Act, and the Criminal Procedure Code when he allowed a confession made before military intelligence interrogators into evidence, (2) violated the principle of no retroactive laws when he used the Special Appeals Procedures issued on December 10, 1989 to hear an appeal on a case that had been decided on January 13, 1989, and (3) contrary to Evidence Act Section 102, incorrectly placed the burden of proof on the defendants to clearly show that they had been persuaded, threatened or promised during the interrogation.

It is plain that the Honorable U Aung Toe's actions were not merely a sign of judicial incompetence, but instead a direct result of "improper influences", in violation of the Beijing Principles. It is well-known that the Burmese judiciary is nothing but a puppet institution of the ruling military regime. In 2006, Paulo Sergio Pinheiro, the United Nations Special Rapporteur on the Situation of Human Rights in Burma, stated: "The judicial system, far from affording individuals basic standards of justice, is employed by the Government as an instrument of repression to silence dissent."²

Although the *U Ye Naung* ruling was issued prior to the Beijing Conference, the precedence it established has been followed in numerous cases decided after the date of the Conference.³ **Consistent with the spirit of the Beijing Principles and the personal commitment made when he signed them, the Honorable U Aung Toe has a duty to repair the abuses of law that he committed as a result of improper influence, such as the *U Ye Naung* ruling and those that relied on it, as well as ensure that such abuses never again occur. He has not done so and thus should be held accountable by you, the co-signers of the Statement.**

The Beijing Principles also provide that "there must always be a right of appeal from [military] tribunals to a legally qualified appellate court or tribunal or other remedy by way of an application for annulment." (Section 44) Furthermore, the 1959 Military Act of Burma, which is still in effect, provides for a similar right to appeal from military tribunals.⁴ However, the SPDC's Constitution (Draft), which will be the subject of a May 10, 2008 Referendum, directly abolishes this right contained in the Beijing Principles and the Military Act. Chapter VII, Section 12 of the Constitution (Draft) provides: "The decision of the Commander-in-Chief of the Defence Services is final in military justice." Clearly, if this Constitution is approved, there will be no right to appeal to a higher civilian court. **By signing the Beijing Principles, the Honorable U**



Aung Toe had a duty to use all of the power of his office to cause the Constitution (Draft) to be amended so that it is consistent with the Beijing Principles in all aspects. Ironically, the Honorable U Aung Toe was also head of the Constitution Drafting Committee. He has blatantly failed to honor the Beijing Principles.

We, the Burma Lawyers' Council, call upon you, the co-signers of the Beijing Principles, to hold the Honorable U Aung Toe accountable for his violations of the Principles. To this end, we respectfully recommend the following:

- A demand from you that the Honorable U Aung Toe resign from his post as Chief Justice of the Supreme Court of the Union of Myanmar;
- A statement from you condemning Section 12 of the Constitution (Draft) issued by the State Peace and Development Council, which is contrary to the principle that there must always be a right to appeal from military tribunals;
- A demand from you to the State Peace and Development Council and Supreme Court that all existing rulings and laws that are inconsistent with the Principles be remedied; and
- The establishment of a process to monitor the judiciary of Burma to ensure that the people will have the right to a fair and public hearing by a competent, independent and impartial tribunal.

(Endnotes)

¹ While the Beijing Statement may merely be an aspirational document, rather than a legally binding one, the signers have at a minimum bound themselves individually to upholding the principles contained therein.

² "Eight Seconds of Silence: The Death of Democracy Activists Behind Bars," Assistance Association of Political Prisoners, May 2006.

³ See, e.g., *Deputy Constable Than Win vs. Zanimarbiwuntha (a) Soe Thein and 23*, 84/2003 – Mandalay Division Court; *Constable Mg Than vs. Khaymarsarya (a) Kyaw Shein and 23*, 86/2003 – Mandalay District Court; *Deputy Constable Ye Nyunt vs. Yi Yi Win and 3*, 74/2004 – Western Division Court (Rangoon); *Deputy Constable Hla Myint vs. U Aye Kyu and 4*, 23/2000 – Rangoon Division Additional (4); *Deputy Constable Ye Nyunt vs. Aung Gyi and 2*, 1347/2004 – Insein Prison Special Court.

⁴ Section 217 of the Military Act provides that a military tribunal decision can be appealed to the Courts-Martial Appeal Court, which in turn can be appealed to the Supreme Court of Burma, provided that the appeal is recommended by the Attorney General.

* * * * *



(C.3)

Chief Justice under Attack and Independence of the Judiciary: What Lessons are there for Burma's Legal Profession?

Introduction

This article focuses on the 2007 judicial crisis in the Islamic Republic of Pakistan. In particular, the ability of its legal profession to work collectively to protect the independence of the judiciary, and lead a popular movement towards the successful reinstatement of the country's Chief Justice. The experience of Pakistan's legal professionals in struggling for judicial independence, human rights and democratic values under General Musharaff's military dictatorship is instructive in drawing parallels with the not incomparable situation in Burma. Why is it that Burma's bar association and legal professionals have fallen silent, and have been unable to stand up and defend the rule of law and rights of their people? What lessons can be learnt from the Pakistani lawyers' experience and applied to the Burmese context?

These issues will be addressed in four parts. First is an outline of the political background and judicial system in Pakistan to provide the context. Next, a review of the judicial crisis of 2007 that sparked the mobilization of thousands of Pakistani lawyers on the streets. In the third section, connections are made between the experiences of the judiciary and legal profession in both countries. And finally, a set of recommendations directed at Burma's legal profession concludes the article.

Part I (i) Pakistan's Political Background

Pakistan gained independence on partition of British India in 1947 and has since vacillated between military and civilian governments. Military leaders have ruled the country for more than half of the past 50 years, and their influence over the political system has been significant.

In 1999, a military coup resulted in General Pervez Musharraf ousting elected Prime Minister Nawaz Sharif and assuming executive powers. In 2001, Musharraf named himself as President and was sworn in, becoming Pakistan's



fourth Army chief to have assumed executive control. The following year there was a handover from military to civilian rule with parliamentary elections in November 2002, and the appointment of a civilian prime minister, Mir Zafarullah Khan Jamali. A confrontation over authority between Parliament and the President ended in December 2002 with a compromise under the terms of which Musharraf pledged to resign his military position as Commander-in-Chief in late 2004. However, in 2004 Musharraf announced that he would retain his military role.

It seems that a similar pattern has been repeated again in 2007 – 08, with Musharraf controversially holding on to power for a second presidential term, and continuing to use a range of oppressive and dubious tactics to secure his control over the country, and notably the judiciary. The latest parliamentary elections resulted in a civilian prime minister. On March 25, 2008, Musharraf swore in Syed Yousaf Raza Gillani as the Prime Minister, who leads a coalition government united against him. Whether this is proof that Musharraf's authoritarian rule is starting to wane is still to be seen, although there are already signs that this may be the case.

Part I (ii)

The Judiciary in Pakistan

Judicial Structure

Pakistan's judicial system comprises three levels of federal courts and three divisions of lower courts, as well as a Supreme Judicial Council. The Supreme Court is Pakistan's highest court, and its Chief Justice is appointed by the President. Together, they determine the other judicial appointments. The Supreme Court has original jurisdiction in any federal – provincial type dispute, or between provincial governments. It also has appellate jurisdiction and advisory functions. The appellate jurisdiction of the Supreme Court covers final orders, judgments, decrees, and sentences handed down by the High Court, the Federal Shari'a Court, and the appellate Tribunals.¹

Each of the four provinces has a high court, the justices of which are appointed by the president after conferring with the chief justice of the Supreme Court and the provincial chief justice. These courts have original and appellate jurisdiction over decrees, judgments and sentences issued by civil and criminal courts. The judiciary however, is proscribed from issuing orders that are contrary to any Presidential decisions. The Federal Shari'a Court hears cases that primarily involve Islamic law. The Bench comprises eight Muslim judges appointed by the President. Although Shari'a was given legal status in 1991 and has original jurisdiction to determine laws which are repugnant to Islamic law, it has not replaced the existing legal code.²



Suspension of the 1973 Constitution

The 1973 Constitution was the first constitution in Pakistan to be framed by elected representatives. It created a parliamentary form of democracy in which the executive power is vested mainly in the Prime Minister's Office. The President is the formal head of state, but is bound to act on the advice of the Prime Minister. This constitution has been suspended three times in its 25 year history; most recently by Musharraf on November 3, 2007. It was later restored on December 14, 2007.

Following the suspension of the constitution in October 1999 by Musharraf, a National Accountability Bureau (NAB) was set up, together with accountability courts in order "to work to eliminate corruption through a comprehensive approach encompassing prevention, awareness, monitoring and combating."³ Under these extra-judicial tribunals, and pursuant to section 58(2)(b) of the constitution, former Prime Ministers Nawaz Sharif and Benazir Bhutto were both charged and convicted of corruption, and their governments dismissed. According to the International Commission of Jurists, the NAB and the accountability courts are prone to denying due process and fundamental rights.⁴ Other special courts, including Anti-Terrorism Courts have also been set up under Musharraf and are not required to adhere to due process or provide fair trial guarantees.

Article 6 of the Constitution, which states that anyone who abrogated or attempted or conspired to abrogate or subvert the constitution shall be "guilty of high treason," may have been an attempt by the drafters to avert potential takeovers of the state by military leaders. History, however, has demonstrated clearly that this has not provided an adequate bulwark against military coups. Moreover, it is evident that constitutional amendments have been successfully made by military leaders such as Musharraf in order to provide immunity against acts such as declaring emergency rule.⁵

Cheema identifies six important steps that army chiefs have taken to give their coups legitimacy and to strengthen the power of military rule. They co-opt the bureaucracy; use accountability against politicians; entrench the army in political and civil affairs; create a new breed of politicians subservient to them under the guise of local government reform; hold elections to create some sort of democratic legitimacy; and finally move to co-opt the judiciary.⁶

Of key concern in this paper, is the recent incursion of military influence into the judicial sphere and the accompanying loss of judicial independence; and importantly, how the legal profession in Pakistan reacted to the Musharraf-led encroachment.



Part II

Pakistan's 2007 Judicial Crisis

Pakistan's judicial crisis unfolded on 9 March 2007 when Musharraf suspended Iftikhar Chaudhry, Chief Justice of the Supreme Court, from his position for alleged impropriety and misconduct, which essentially meant corruption charges.⁷ This bold act was the first time in the Supreme Court's 50 year history for a chief justice to be suspended.⁸ Chaudhry's removal infuriated the country's legal community and immediately resulted in several hundred lawyers demonstrating publicly against what was seen to be an executive and anti-constitutional attack on the independence of the judiciary. Within one week, the protests escalated into a full-scale campaign against military rule. By May, a nationwide protest movement was underway with calls for a civilian government, fair elections, and the return of democracy.

After months of sustained and widespread public protests in Pakistan, and having been held under house arrest since 10 March 2007, a full 13-member bench of the Supreme Court reinstated Chaudhry on technical grounds as head of the judiciary, and quashed all charges against him on 20 July. This became an historic moment in Pakistan as it was the first ever verdict to contradict a military ruler.

The assaults on democracy and the rule of law by Musharraf's administration continued right through 2007, with the arrest and detention of thousands of lawyers and the misuse of existing laws and adoption of new or amended laws that further undermined the civilian judiciary and consolidated military control.⁹ According to Basilio Alo, "Chaudhry has spoken out against emergency rule and inspired thousands of his lawyer-brethren to protest in the streets in their traditional black suits and ties. He has become an international symbol of an independent judiciary and of resistance to the excesses of military rule. Hundreds of attorneys have also turned out to protest on his behalf in cities across the country."¹⁰

Tensions remained high surrounding the re-election of Musharraf as President for a second term. In November 2007, shortly before the Supreme Court of Pakistan was to determine the constitutional validity of his re-election as president,¹¹ Musharraf, as Chief of Army Staff, suspended the constitution, dismissed about 60 senior judges and lawyers of the supreme court including, for the second time, Chief Justice Iftikhar Muhammad Chaudhry. Many of these members of the judiciary were placed under house arrest. Musharraf also ordered the arrest of political dissidents and human rights activists, and closed all private media. He then declared a state of emergency in Pakistan which lasted until December 15, 2007, and during that time the constitution remained suspended. On November 24, 2007, the Pakistan Election Commission confirmed his re-election as President.¹²

Yousef Raza Gillani, immediately after becoming prime minister, ordered



the release of deposed chief justice Chaudhry and other top judges from house arrest on 24 March 2008. That move has been seen as a direct affront to Musharraf, and one which challenges his political authority.¹³

Dismissal of the Chief Justice

The charges laid against Chief Justice Chaudhry by Musharraf's government were judicial misconduct, misuse of office, and nepotism. It is alleged that he used his position for personal gain and more specifically, sought to position his son in the police force's upper ranks. Based on these circumstances, Musharraf declared the Chief Justice "non-functional". Few people were convinced by Musharraf's explanation for his dismissal of Chaudhry; and many believed that he did not have the power to suspend the Chief Justice in such circumstances.

Given Chaudhry's track record of demonstrating judicial independence and taking on cases that challenged the government, there is little doubt about Musharraf's motives in seeking to silence what he felt to be a hostile judiciary. For example, in the Pakistan Steel Mills privatization case, the Supreme Court blocked the sale of a state-owned steel mill, from which some government officials reportedly would have profited. The fact that the judiciary dared to confront the somewhat taboo yet scandalous issue of the Pakistani military's profitable economic empire,¹⁴ could be deemed historically significant and exceptional.

Chaudhry also raised the issue of disappeared persons thought to be held by Pakistani and United States state intelligence agencies in connection with the "war on terror." Moreover, Chaudhry's apparent opposition to Musharraf's continuing as both President and Army chief irked the military leadership considerably. According to Imran Khan of the Tehrik-e-Insaaf (Movement for Justice) political party, "this is the first time in our history that the judiciary has asserted its independence. Normally, it just sides with whoever is in power. Change is irreversible. You can't have prosperity without genuine democracy and an independent judiciary."¹⁵

Considering that a constitutional amendment was required for Musharraf to continue to double as President and Commander-in-Chief, the military government saw the unallied Chief Justice as an impediment to Musharraf staying in office without removing his uniform. The dismissal of Chaudhry gave Musharraf tremendous powers. He targeted the judges principally, many of whom he sacked, and the country's lawyers by the hundreds, who were arrested and jailed without charge or trial.¹⁶

Fighting for an Independent Judiciary

The protest movement gained ground by employing the following tactics to pressure the Musharraf government and to draw national and international attention to the crisis.



- *Mass public street demonstrations: human chains, protests, picketing, rallies*
- *Targeted demonstrations*
- *Boycott of court proceedings; complete strike of courts*
- *Resignations in protest*
- *Utilizing the media*
- *Inter-city marches*
- *Lawyers sending affidavits en mass to support Chief Justice's legal team*

Lawyers from all parts of Pakistan, Supreme Court judges, other judges, and retired judges participated to show their support for the Chief Justice for the first time in the history of Pakistan. A national conference was organized by lawyers to call on all political parties to postpone their assemblies and join the struggle to bring about democratic change to the government.

Furthermore, the Pakistan Bar Council (PBC) mobilized professional parties, non-governmental organizations, the Pakistan Federal Union of Journalists, the Medical Association, the Medical Council, the Engineering Council and associations of chartered accountants, architects and other activists to join together in civic actions.

Two important features of the protest movement spearheaded by the legal profession in Pakistan were that it was both unified and comprehensive. Protestors were united in their cause to bring about the reinstatement of the chief justice and other dismissed members of the legal profession, and demand that the rule of law and a democratic system of governance be put in place. They additionally called for the release of those disappeared by the military and intelligence agencies, and sought an end to the police practice of beating lawyers and journalists.¹⁷

The sight of hundreds of typically well-dressed lawyers engaged in impassioned and nonviolent direct action on Pakistan's city streets was also irresistible for the international media, and the judicial crisis received widespread coverage in many countries.

Arrests, Detentions and Violent Suppression

Pakistani authorities responded to the protest movement in a heavy-handed way, employing violent tactics to suppress the protestors, according to the Asian Human Rights Commission.¹⁸ Demonstrators were attacked, the national media was curtailed, and severe restrictions were imposed on the discussions about the Chief Justice military procedure before the Supreme Court. For example, a 14 March 2007 protest led by lawyers from the Sindh High Court Bar Association involved forming a human chain around a court building. Police used violence to break up the demonstrators, which resulted in scores of injuries and arrests.¹⁹

The military government suppressed protests by arbitrarily detaining lawyers and other demonstrators under the provisional criminal code.²⁰



Thousands of lawyers, estimated to be at least 3000, have reportedly been arrested across the country since 3 November 2007, many said to have been beaten and taken to unknown locations, some arrested without arrest warrants, some held incommunicado.²¹

Violence and intimidation was also reportedly used against the Chief Justice's family, his legal team, as well as a range of other people in positions of authority, such as the president of the Supreme Court Bar Association (SCBA), and the vice-president of the Pakistan Bar Council.

Part III

What are the implications for Burma?

The Historical Role of Lawyers and the Bar Council in Burma

Following independence in 1948, and a period of democratic governance, Burma became an authoritarian state from 1962. General Ne Win took control in a military coup that violated the 1947 Constitution, and later replaced all political parties with his Burma Socialist Programme Party (BSPP). In 1988, amid economic instability and mass civilian protests, the military declared martial law and established a new dictatorship led by the State Law and Order Restoration Council (SLORC). This was subsequently reincarnated as the State Peace and Development Council (SPDC) in 1997, and Senior General Than Shwe is presently at the head of the military junta.

The potential for an independent judiciary in Burma disappeared as rapidly as Ne Win rose to power. It is arguable that prior to 1988, the Bar Council and Bar Associations in Burma retained a degree of freedom in their organization. For instance, the Executive Boards of the Bar Council and Bar Associations were elected from among their membership by a general vote. In saying that, during the BSPP era, senior judges were chosen from among members of parliament, and they in turn appointed other judges down the hierarchy – typically those who were loyal to Ne Win.²² In this way, members of the judiciary were answerable to the Executive and the separation of powers did not exist.

During the democratic uprising in 1988, the Bar Council of Burma issued a statement that supported the will of the people and criticized the violent actions of SLORC. A significant number of judges and lawyers also joined, took to the streets and marched in the public demonstrations. Despite the legal profession having publicly vowed to support and stand for the people, this has not been borne out in the post-1988 era for two main reasons: monopolization of the Bar Council and the upper echelons of the legal profession by the military regime, and rampant corruption amongst the judiciary's ranks.

Currently, the SPDC appoints all Bar Council members based on loyalty and favor. Members can be expelled at anytime if they cease to follow orders from the military junta. Absolute control by the SPDC has rendered the Bar Association and Bar Council ineffective in opposing the regime and supporting the people of Burma.



The inability of the judiciary and legal profession to be independent from the legislature and facilitate good governance is because it is rooted in a culture of corruption. Judges and court officials who regularly accept bribes and rule in favor of those who bribed them are in the majority. To this end, a corrupt judiciary makes the action of stamping out corruption amongst other public officials in other sectors somewhat redundant.

In 2006, Mr. Paulo Sergio Pinheiro, the Special Rapporteur on the situation of human rights in Myanmar reported to the UN General Assembly that, "The capacity of law enforcement institutions and the independence and impartiality of the judiciary have been hampered by sustained practices of impunity. I am also very concerned by the continued misuse of the legal system, which denies the rule of law and represents a major obstacle for securing the effective and meaningful exercise of fundamental freedoms by citizens."²³

When examining why Burma's bar association and legal professionals have fallen silent, and failed to defend the rule of law and the rights of their people, it is essential to acknowledge the judiciary's systemic problems of corruption, impunity and manipulation by the military. There is no doubt that addressing Burma's debased courts is a long and fraught struggle. Great courage, integrity and determination are required to help restore what the Asian Legal Resource Centre has termed the "disgraceful condition of Myanmar's judiciary."²⁴ And yet it is clear that there are victims and lawyers willing to argue seemingly impossible human rights cases and to fight for real justice.

The experience of the Pakistani lawyers' movement in 2007 should provide some inspiration and impetus to the legal profession inside Burma. The victory of the Pakistani lawyers and the civic movement in struggling fearlessly to return the Chief Justice to his rightful position, and defying the autocratic leadership of Musharraf, serves as a case study for hope. In the face of brutal authoritarianism and an absence of the rule of law, and after years of repression and demoralization amongst the ranks, it is still possible to fight for change. The experience in Pakistan demonstrates that the "affected people themselves have retaliated, fought hard for months, defeated the political power of the military leader and now have ensured that the parties elected by them return the judiciary to its rightful place."²⁵

Burma's judiciary is monopolized and manipulated by the military regime and yet the struggle for judicial independence hardly registers a note. Now is the time for Burma's lawyers and judges to step forward and fight for judicial independence.



Part IV

Recommendations

The Bar Council and Associations should:

- actively support lawyers who fight for justice. When appropriate, they should speak out publicly in defense of lawyers who protect the rights of people legally;
- revitalize the spirit of the legal profession so as to motivate younger lawyers to defend justice;
- insist on proactive participation by their members in bringing about reform of the judiciary and in stamping out corrupt practices;
- not allow Executive Members to be appointed by the military regime;
- build stronger connections with the media, including the regional and international media, as well as with other relevant professional organizations;

Additionally,

- The Bar should initiate and facilitate changes on the Bench;
- To maintain its independence from the ruling military regime, the chair of the Bar Council should not be the Attorney General. In most countries, unlike in Burma, the chair of the Bar is elected by its members;
- Lawyers should highlight the ways in which the military regime interferes with the independence of the judiciary and educate the people about the importance of an independent and impartial judiciary for a fair society;
 - Lawyers should identify that they carry the greatest responsibility for resolving conflicts of the people caused by the military dictatorship form of government;
 - The Chief Justice should not decide a case according to the desired wishes of the military regime, nor base decisions on political considerations;
 - The people in Burma should support the Bar Association in its struggle to create an independent judiciary;
 - The legal community as a whole needs to build more effective relations with the UN agencies, the International Community and other organizations to increase international pressure on Burma.

(Endnotes)

¹ International Commission of Jurists, *Pakistan: Attacks on Justice*, eleventh edition, p. 273 <http://www.icj.org>. Accessed 28 January 2008.

² U.S. Department of State, Background Note: Pakistan, May 2007 <http://www.state.gov/r/pa/ei/bgn/3453.htm>. Accessed 10 January 2008.

³ National Accountability Bureau, Official website <http://www.nab.gov.pk>. Accessed 28 January



2008.

⁴ Above at 2, p. 273.

⁵ Ali Khan in Jayshree Bajoria, "Pakistan's Constitution", Council on Foreign Relations: A nonpartisan resource for information and analysis, March 6, 2008.

⁶ Moeen Cheema in Jayshree Bajoria, "Pakistan's Constitution" Council on Foreign Relations: A nonpartisan resource for information and analysis, March 6, 2008, http://www.cfr.org/publication/15657/pakistans_constitution.html. Accessed 30 March 2008.

⁷ Al Jazeera, "Pakistan chief justice released" <http://english.aljazeera.net/NR/exeres/A1A06C7B-3017-4098-B22A-098A7FB10436.htm>, 24 March 2008. Accessed 30 March 2008

⁸ Wikipedia "Iftikhar Muhammad Chaudhry". Last modified 30 March 2008, http://en.wikipedia.org/wiki/Iftikhar_Muhammad_Chaudhry#Suspension_and_reinstatement. Accessed 30 March 2008.

⁹ International Commission of Jurists, Pakistan – Further Dismantling of Rule of Law: amended laws undermine civilian judiciary and consolidate military control, 13 November 2007, http://www.icj.org/news.php3?id_article=4225&lang=en. Accessed 28 January 2008

¹⁰ Basilio H. Alo, 'Rule of Law: Lessons from Martial Law', Business World, 9 November 2007, p. S1/4.

¹¹ General Pervez Musharraf, while still army chief, was re-elected as President on 6 October 2007 in an election that has been widely seen as legally dubious. The Economist called it "unrepresentative, rigged and at gunpoint". The Economist, "Farce in Islamabad" 11 October 2007, http://www.economist.com/opinion/displaystory.cfm?story_id=9947009. Accessed 28 January 2008.

¹² Wikipedia "Pervez Musharraf", Last modified 28 January 2008, http://en.wikipedia.org/wiki/Pervez_Musharraf. Accessed 29 January 2008.

¹³ Al Jazeera, "Pakistan chief justice released", <http://english.aljazeera.net/NR/exeres/A1A06C7B-017-4098-B22A-098A7FB10436.htm>, 24 March 2008. Accessed 30 March 2008.

¹⁴ Ali Dayan Hasan, South Asian researcher for Human Rights Watch cites the Pakistani military's economic empire to be valued at US \$20 billion. See Ali Dayan Hasan, "Pakistan's General Problem: popular resistance to Musharraf's rule has seemingly caught the U.S. off-guard", Los Angeles Times, 27 June 2007, <http://hrw.org/english/docs/2007/06/27/pakist16263.htm>. Accessed 12 December 2007.

¹⁵ Above at 9.

¹⁶ William Dalrymple, 'Days of Rage: Challenges for the Nation's Future', The New Yorker, 23 July 2007.

¹⁷ Asian Human Rights Commission, Statement dated 14 March 2007, AS-049-2007 <http://pakistan.ahrchk.net/chiefjustice>. Accessed 12 December 2007.

¹⁸ See for example, documentation of the crisis on <http://pakistan.ahrchk.net/chiefjustice>.

¹⁹ See the joint online publication by the Pakistan Bar Council and the Asian Human Rights Commission documenting the 2007 Lawyers Movement at <http://pakistan.ahrchk.net>.

²⁰ Human Rights Watch, Pakistan: Release Chief Justice of the Supreme Court – attacks on protests by lawyers should cease, 13 March 2007, <http://hrw.org/english/docs/2007/03/13/pakist15475.htm>. Accessed 12 December 2008.

²¹ International Commission of Jurists, Pakistan – Further Dismantling of Rule of Law: amended laws undermine civilian judiciary and consolidate military control, 13 November 2007.

²² Asian Legal Resource Centre, "UN Human Rights Council: Myanmar's Degraded Judiciary and System of Justice", Posted 12 April 2007, <http://www.hrsolidarity.net/mainfile.php/2006vol16no02/2508>. Accessed 30 March 2008.

²³ Paulo Sergio Pinheiro, Statement by Special Rapporteur on the situation of human rights in Myanmar, 61st session of the General Assembly, Third Committee, New York 20 October 2006. <http://burmalibrary.org/docs3/GA2006-SRM-oral2.pdf>. Accessed 30 March 2008

²⁴ Asian Legal Resource Centre, "UN Human Rights Council: Myanmar's Degraded Judiciary and System of Justice", Posted 12 April 2007, <http://www.hrsolidarity.net/mainfile.php/2006vol16no02/2508>. Accessed 30 March 2008.

²⁵ Asian Human Rights Commission Statement, 10 March 2008, "Pakistan: Lessons to be learned on post conflict justice arising from the decision to restore the judiciary", <http://www.ahrchk.net/statements/mainfile.php/2008statements/1415/>. Accessed 30 March 2008.



(C.4)

Analysis on the status of the economic, social, cultural and environmental rights of people in Burma (2007)

Introduction

This report analyzes the extent to which the expansion of globalization and government policies have impacted the economic, social, cultural and environmental rights of the people in Burma and contributed to the increase in poverty. Due to corrupt and unqualified government administration, foreign companies that invested in Burma following the transition in 1988 to a market driven economy have destroyed people's livelihoods, resulting in human rights abuses and poverty. This report also analyzes how the lack of government accountability, rule of law, freedom, transparency and security has caused human rights violations.

The causes of poverty

Forty-six years of military rule have made Burma one of the poorest countries in the world. According to the UN, around one-third of Burma's people survive on less than US \$1 a day¹.

Many of the regime's economic policies have negatively impacted people's economic life because they fail to create an environment in which people can fully participate in and benefit from the economy. For instance, private ownership rights are not guaranteed in Burma. People's properties are subject to government expropriation at any time. Hundreds of thousands of farmers have been deprived of their livelihoods by illegal confiscation of their lands. Furthermore, there are several restrictions on trade practices, such as a prohibition on trade from one region to another and travel restrictions. These restrictions prevent people from conducting business. Burma does have several taxation laws but the military regime and law enforcement agencies do not comply with the laws, levying much more taxation than the laws proscribe, which in turn causes an increase in the price of goods that pushes people deeper into poverty. Criminalization of possessing foreign currency is another big barrier to conducting business. Moreover, the infrastructure which is essential for economic development, such as transportation, electricity and water supply, is neglected and delays the economic development of the country. Burma does not have anti-trust law which prevents monopolies; thus, a limited group of government-controlled companies dominate the market, preventing common people from owning businesses in many important sectors. Access to communication, such



as email and internet, is very limited in Burma. During the people's uprising in September 2007, the government cut off all network services. Today's market economy relies heavily on accessible communication – extreme restrictions make it almost impossible to conduct business.

The government mismanagement led to the increase in the price of goods that sparked the demonstrations in August and September, 2007. Prices were increased by up to 4 or 5 times. People could not make ends meet. Even after monks led the demonstrations, the government did nothing to meet the people's demands, instead calling in armed forces to violently disperse the demonstrators, arrest hundreds of participants and crack down on the peaceful monk and civilian protestors. The crackdown resulted in an increase in political prisoners. As of January 31, 2008, there were approximately 706 more political prisoners than in 2006, reaching an estimated total of 1,864 excluding cases of detention since the crackdown². Those political prisoners have been subjected to torture and various forms of ill-treatment and many have even been denied access to proper medical care³.

Social impact of failure to adequately allocate budget for health and education

The military regime has not released information about the allocation of its budget for many years. Nonetheless, according to the International Institute for Strategic Studies, in 2007 the regime spent 0.4% and 0.5% of the total budget on health and education, respectively, while it spent 40% of the national budget on the defense⁴. This underfunding of essential services deprives the citizens of their right to education, health care and an adequate standard of living. As a result, many children cannot afford to go to school. According to the UN, half of all children in Burma fail to complete primary school⁵.

Since the government has spent so little of the national budget on health care, the poor have no real access to hospitals and adequate medical attention. The basic social service system provided by the government is insufficient for the amount of people who need it and the current level of poverty. There are some foundations and religious groups that provide social centers for the disabled, orphans and the elderly, but those foundations are limited to providing specific social services and can only serve a limited number of people. The government has no interest in taking care of these vulnerable groups, who are then left without support.

Environmental impact and human rights violations as a result of trade

Burma trades primarily with neighboring countries such as Thailand, China and India. Natural resources such as timber, hydroelectric power and natural gas are the primary exports. The focus on exporting natural resources rather



than services and manufactured goods has caused environmental destruction, loss of livelihood and human rights abuses. Most foreign investors and domestic companies mainly concentrate on natural resource exploitation, which creates only a small employment opportunity. The following cases are examples of how the trade practices of the government negatively affect the rights of the people.

Impact of logging and mining

After the Burmese government reached a ceasefire agreement with an ethnic Kachin armed group in 1994, the military regime signed a contract with China to cut down timber and hardwood in Kachin forests. Due to deforestation, there was a historic flood in Kachin state in 2004, climate change and an increase in temperature⁶. In another example of trade having a negative environmental impact, Chinese companies were allowed to extract gold along Burma's longest river, the Irrawaddy. They amalgamated large amounts of mercury with the gold and dumped it into the river. Now, the Irrawaddy has been polluted with mercury that threatens the health of the people⁷. Burma is one of the world's top-producers of high-quality rubies and is the top jade producer⁸. However, Burma's gem mines, which are ruled by military authorities and mining companies, experience unsafe working conditions and flagrant human rights violations, including widespread land confiscation, extortion, forced labor and child labor⁹. Careless use of machines and oil has caused environmental pollution. Infectious diseases such as HIV/AIDS, malaria and tuberculosis are increasing in mining areas and, because of readily available drugs, more and more people have become drug users and addicts¹⁰.

Impact of dam and hydropower projects

Around 2005, the Burmese military regime signed a memorandum of understanding with Thailand and China to construct a series of hydropower dams along Salween River. Salween Watch reported that human rights violations, including forced relocations, rape, forced labor, illegal confiscation of property and murder, are common in these areas. At the Tasang site in Shan state, 300,000 people have been forcibly relocated since the dam studies began¹¹.

Impact of gas pipeline project

Another example of a trade agreement that has brought human rights abuses is the construction of a pipeline to export natural gas. In the 1990's, the 260 kilometer-long *Yadana* natural gas pipeline was constructed from the Andaman Sea, across Burma, to Thailand. Forced labor was used for project infrastructure and villagers were made to carry arms and supplies for soldiers patrolling the pipeline route. Local people were subjected to abuses such as extrajudicial killings, torture, rape and extortion by pipeline security forces. Villages were relocated to clear the way for the pipeline and villagers' lands along the pipeline route were confiscated¹². Similarly in Arakan state of western



Burma, since 2000, Korean international company Daewoo has been exploring underwater gas in the Bay of Bengal off the Arakan coast. Military presence was increased in the area to secure the gas pipeline. Along with the increase in troop deployments came a corresponding increase in human rights abuses such as extortion, violence, forced labor and land confiscation to make way for barracks, outposts and other military infrastructures¹³.

Impact of contract farming

In December 2005, Burma signed a contract farming agreement with Thailand, in which Burma agreed to reserve 17.5 million acres for Thailand to plant crops such as sugarcane, palm oil, maize, cassava and rubber to be supplied to factories in Thailand¹⁴. This contract farming agreement increased land confiscation in Shan state and Kachin state¹⁵. For instance, with the help of the military regime, the State Peace and Development Council (SPDC), the pro-junta Yuzana Company seized over 200,000 acres of land in Hukawng Valley to cultivate crops for Thailand¹⁶. Similar land confiscation is taking place throughout the country for many other purposes. In Burma, land is the primary source of livelihood for more than half of the population. The government confiscation deprives hundreds of thousands of people of their livelihood.

Restrictions on international humanitarian work

The SPDC's foreign aid regulations require that all forms of aid come through the state system. When aid enters the country, the military regime takes a portion of it, leaving only a greatly reduced amount for the intended beneficiaries. The regime also uses several means to restrict aid, including travel restrictions, examinations of all Burmese staff hired by international organizations, administrative harassment such as delays or denials of passport renewals for Burmese UN staff, and denials or revocation of permission to hold meetings¹⁷. The effect of the SPDC's policies can be seen from the withdrawal of Global Fund, an international organization that provided a large amount of humanitarian assistance to Burma, especially in fighting AIDS, tuberculosis and malaria. In December 1995, Global Fund withdrew its humanitarian assistance from Burma due to increased travel restrictions¹⁸. The Burmese military regime's restrictions on humanitarian work deprive the citizens of their right to access health care and are arguably a violation of human rights.

Child labor and child soldiers

Burma is still using a large number of child soldiers. Human Rights Watch has estimated the number of child soldiers in Burma to be as high as 70,000¹⁹. Children are often forced into the army to compensate for a lack of adult recruits, sometimes through beatings and threats²⁰.

Children are unprotected from exploitation in Burma. For the survival of their families, many children have to work (and are paid less than adults), often



at teashops, restaurants, construction sites, and as domestic workers²¹. Shop owners prefer hiring children because they are cheaper²². In Burma, one can see children selling water, cigarettes, newspapers and journals at train and bus stations when they should be at school²³.

Burma acceded to the Convention on the Rights of the Child (CRC) in 1991. As a member state of the CRC, Burma has a responsibility to respect the rights of children and fulfill its obligations under the CRC. Every year, however, the military regime fails to take effective action to prevent children from being exploited by businesses, even when they use child labor in government development projects. Moreover, despite denials, the regime forcibly recruits children into the army.

Gender inequality and women's rights

In the entire bureaucracy of the ruling military regime, there are no women in high government positions. Women's participation in government continues to be denied by longstanding traditional attitudes of men toward women. In addition, women are in danger of being trafficked as foreign brides or prostitutes.

As a result of the Burmese government and its neighboring countries reaching border trade agreements, the sex industry has developed in some towns located at border crossings. Hundreds of thousands of Burmese women seek jobs in these border towns, mainly in the sex industry²⁴. This situation enables women to be trafficked very easily to neighboring countries. The Burmese government's failed economic policies have a clear connection to this problem. A primary reason why women are forced to leave their homes for work in border towns and neighboring countries is the lack of jobs in Burma. Burma signed the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) in 1997. As a member state, the Burmese government has an obligation to protect and promote the rights of women and provide sufficient social security for women. The government has not taken effective action to prevent women from being abused and trafficked. It also has done nothing about the CEDAW obligation to establish women empowerment programs.

Ethnic minorities and linguistic rights

Burma is a multi-ethnic nation with over one hundred spoken languages. But the government has never tried to teach ethnic languages or literature in schools. In order to keep their own literature alive, ethnic groups teach them in monasteries and churches at their own expense. In some cases, even teaching ethnic literatures in monasteries and churches is banned by the authorities. Some observers and critics have even called the oppression of the ethnic groups "Burmanization", as many ethnic people have themselves experienced.



Conclusion

The absence of the rule of law is the root cause of all the aforesaid problems. The country needs good governance which is accountable and transparent. The government must refrain from interfering in economic activities. In the case of Burma, too much government intervention in economic activities hinders the success of a market based economy. People's participation in policymaking is institutionally denied. Civil societies are weak in Burma compared to neighboring countries. The 1988 Law Relating to Formation of Organizations restricts the formation and growth of civil societies. There is no civil society campaign demanding that the government fulfill the needs of the population. International humanitarian aid fails to reach the population without first benefiting the ruling regime. International monitoring mechanisms are needed to make sure the population is benefiting from foreign aid. Burma urgently needs policies that promote the genuine principles of the rule of law, good governance, institutional reform, administrative reform, human resource development, employment creation, poverty reduction and social sector development. All people, including socially disadvantaged groups and ethnic minorities, must fully participate in such an integrated development process.

(Endnotes)

¹ <http://www.irinnews.org/Report.aspx?ReportId=76279>.

² <http://www.aappb.org/release100.html>.

³ Id.

⁴ Mizzima News

, 1 January 2007.

⁵ <http://www.irinnews.org/Report.aspx?ReportId=76279>.

⁶ A choice for China, Global Witness Report 2005.

⁷ Ecological Crisis: A Kachin Experience, by Ningrang Tu Nan, Kachinnet.

⁸ Human Rights Watch in News, Burma Gem Trade and Human Rights Abuses, January 11 2008.

⁹ Id.

¹⁰ Id.

¹¹ Salween Watch 2007, Volume 1, pages 1, 3.

¹² http://www.earthrights.org/site_blurbs/yadana_natural_gas_pipeline_project.html.

¹³ Shwe Gas Report, July 2006, page 22, by All Arakan Students and Youth Congress.

¹⁴ <http://ethnicvoices.civiblog.org/blog/Thailand>.

¹⁵ Shan Herald Agency for News, 25 January 2006.

¹⁶ Kachin News Group, 17 Aug. 2007.

¹⁷ <http://www.irinnews.org/Report.aspx?ReportId=75910>.

¹⁸ <http://www.sciencemag.org/cgi/content/summary/309/5739/1312a>.

¹⁹ <http://news.bbc.co.uk/2/hi/asia-pacific/7216848.stm>.

²⁰ Id.

²¹ http://www.rehmonnya.org/allwcrp_detail.php?id=24.

²² Id.

²³ Id.

²⁴ Driven Away, Kachin Women Association Thailand, 2005, pages 18,20.

* * * * *



(C.5)

September Uprising

Background

As a result of the economic and social crisis in Burma, on April 22, 2007, Ko Kyaw Htin and Ko Thein Aung Myit, leaders of Myanmar Development Committee (MDC), and Ko Thein Myit Htun, Ko Aye Lwin, Ko Myit Sein, Ko Then Zaw Myit and Ko Tin Maung Gyi, members of the National League for Democracy (NLD), were holding posters and demonstrating in front of the Sanpyazail Market in Thain Gam Jun Township. They had five demands for the military regime:

- (1) to decrease the price of the food
- (2) to provide electricity 24 hours a day
- (3) to reduce unemployment
- (4) to defend and protect the youth of good families
- (5) to grant the rights to free trade

On September 5, 2007, four Pakoku religious monasteries comprising around 600 monks marched through the city reciting “Free from violating each other” and praying for the well-being of others by peacefully walking on the roads. The next day, two monks were beaten under the orders of Union Solidarity and Development Association (USDA) Secretary Ko Hla Win and Ko Kin Mg Win from Swanareshin.

The monks had four demands for the SPDC:

- (1) to apologize to the monks from Pakoku until they are forgiven
- (2) to decrease the price of food and petrol
- (3) to release political prisoners, including Daw Aung San Suu Kyi
- (4) to seek national reconciliation with democratic activists in order to solve the country’s crisis

After the 1988 uprising, the military regime learned that the people had great respect for the monks in Burma. So they know how to divide the monks to prevent unity and they issued many statements restricting monk activities, such as a monk curfew and an order that the monks can only involve themselves in religion. According to a USDA central order to crack down on the September 2007 assembly, the regime provided a short training, cell phones, weapons and



money to the USDA members, soldiers and Swam A'Sain. The military regime had already planned to defend against the boycott by prohibiting the monks from accepting alms of food in town in early September in Irrawaddy Division. There was also an announcement that public service personnel had to arrive at the office before 9:00 a.m. and they could not go outside without permission.

On September 24, 2007, the Ministry of Religion requested the monks' leaders to release guidelines to control the monks because the SPDC believed that the monks were destroying the religion. According to that request, the monks' leaders released Guideline No. 93, which stated that monks have to obey previous Guidelines Nos. 65 (regarding monks who commit crimes), 81 (monks have to live in their monasteries as required by their leaders), 83 (monks cannot be involved in political parties) and 85 (monks cannot go outside without wearing their robes). If they did not, the government would respond according to the civilian law, not just religious law. At the same time the regime released a curfew law for the public.

During the demonstrations

On September 26 – 29, the soldiers dispersed the monks and public assembly while wearing police uniforms and using tear gas, fire hoses, sticks, smoke bombs and tanks. The regime used excessive force to take action against the peaceful assembly in several places in Rangoon, Sit Twain, Mandalay and other places. To block the news inside the country, the regime cut down phone lines, closed the internet cafes in Rangoon, denied immigration visas to foreigners and reduced Myanmar Teleport (formerly Bagan Cyber Tech) internet speed service, which is controlled by the government.

On September 27, the government released the news on TV that nine people died.

On September 28, the government started arresting people and monks separately. The mortuary general hospital in Rangoon was guarded by firefighters and tanks.

On September 29, the military soldiers shot at the marchers, including students, in front of Merchants' Hotel in Rangoon. They also arrested demonstrators in their homes at night.

On October 5, the government released news stating that they detained 533 monks in order to divide the real monks from the impostor monks. After their interrogations, they released 398 monks.



After the uprising

The regime ordered a curfew on September 18 and withdrew it on October 20. After that, they started arresting monks and people involved in the uprising. If they could not arrest the activists, they arrested their relatives or family member and held them as hostages.

The regime has forced monks to exchange their robes for normal clothes. This is impolite and against Buddhist principles. The officers at the prisons treat the monks and other prisoners the same, including the types and times of meals. At night, the monks cannot practice their religious meditation and they even have to sleep in a small empty place that is pointing towards the officer's feet.

Analysis

The SPDC had established rules for monks and different rules for civilians. Sometimes, the SPDC would specify that a violation by the monks of a monk rule would result in prosecution under civilian laws. During the September demonstrations, the monks did not violate the monk rules or any rule that made them liable under civilian laws, and so the regime did not have the authority to take action against them under civilian laws or procedures.

Furthermore, under the law, the regime also did not have the power to crackdown on the civilian demonstrations. The law does not permit cracking down on a peaceful demonstration. According to Criminal Procedure Section 141, the government can only stop an assembly when people are violating existing laws.

The SPDC announced that the monks had violated Order 2/1998, which prohibited the monks from creating problems during demonstrations or organizing meeting and gathering places for demonstrators. As a result, on September 25, 2007, the SPDC issued Order 1/2007 for the monks. This Order references Criminal Procedure Section 144, which empowers a magistrate to issue a temporary emergency order if someone is likely to cause dangers, such as injury, danger to human life, health or safety, or disturbance of the public tranquility. Order 1/2007 does not apply to the case of the September demonstrations. The SPDC wrongly used it to arrest monks and others.

According to the 1945 Police Act, Section 46(2), if the police think that the demonstration will breach the peace and security of the public, they have to order the persons who lead the demonstration to obtain a license. Police Act Section (31) then provides that there can be a peaceful demonstration. To



exercise this right in an orderly fashion, the application should be submitted to the police station and the government has to inform the police that they are responsible for helping prevent a disruption to the public traffic and traveling in public areas. The application to provide licenses to demonstrate should not be delayed. The police can stop the assembly if the demonstrators violate the license rules. If the SPDC respect the rule of law in the country, they have the responsibility to follow the existing law regarding the treatment of the assembly. According to Criminal Procedure Section 130(2), when the army takes action to crackdown or arrest an assembly, they must not use excessive force to destroy public property or cause serious harm to people.

According to the Criminal Procedure Section 127, magistrates or police officers not below the rank of sub-inspector have the power to order the dispersal of unlawful assemblies or assemblies of five or more persons who are likely to cause a disturbance. The demonstrators did not violate any laws and were not likely to cause a disturbance. They were demonstrating peacefully. The SPDC ordered their soldiers to disperse the crowds with guns, teargas and batons – thus, they had no respect for the law.

The objective of the army is to protect the country from war or external aggression, while the police have to maintain the security inside the country. The Burma police are responsible for recognizing cognizable offences; they cannot arrest people for no good reason. The law does not allow it. According to a Special Law, officers of the customs and immigration agencies of can arrest people. According to criminal procedure, they have to submit the case to the court within 24 hours of the arrest. Normally, the police can arrest without a warrant for cognizable offences for which the punishment is more than 3 years imprisonment. The procedures provide how the police must take action in cases for which the potential sentence is less than 3 years. According to Criminal Procedure Section (202-(i)), for complaints of cognizable offences, the complaint has to be submitted directly to the magistrate and if the court refers the case to the police station, the police have the power to investigate or question the offenders. This means that in these cases, the police need authority to investigate and cannot question someone for no reason. Generally, police can arrest people for cognizable offenses (crimes that can be punished by over 3 years' imprisonment) without a warrant. However, according to Criminal Procedure Section 62, the police have to report every arrest made without a warrant to the court. There were several people arrested by the police who did not have an opportunity to go to the court first, but instead went directly to the prisons.

* * * * *



Part D: Criminal Accountability Issues

(D.1)

[The following is an excerpt from “Burma’s ‘Saffron Revolution’ is not over: Time for the international community to act”, issued by the International Federation of Human Rights and the International Trade Union Confederation in December 2007. It has been reprinted here with permission. The entire publication can be found at http://www.ituc-csi.org/IMG/pdf/Birmanian_FIDH_ITUC_101107.1]

Possible crimes against humanity: prosecuting the Burmese military before the International Criminal Court (ICC)?

“Whatever the outcome of dialogue, those guilty of crimes against humanity must be brought to justice”.

NCUB Presidium

“Many people think an ICC referral would stop or hurt a political dialogue. But criminal accountability needs to be highlighted. The crackdown was part of crimes against humanity. (...) People should not put too much hope on political dialogue. Past and existing crimes cannot be left like that. Victims cannot be ignored. (...) It’s about victims.”

Aung Htoo, General Secretary of Burma Lawyer’s Council

Criminal accountability for those responsible of the crimes committed in Burma is an issue far less discussed than the need for national reconciliation or the call for economic sanctions. However, this issue begins to feature higher on the list of the priorities put forward by representatives of Burma’s democracy movement.

Under Article 7(1) of the ICC statute, the definition of Crimes Against Humanity “means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution



against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

In order to establish that these acts fall within this definition, it must be shown that they were part of widespread or systematic attacks against civilian population.

The joint FIDH-ITUC mission took place fairly soon after the violent crackdown in Burma. Several signs suggest that it can become a serious issue. An open letter to the United Nations Secretary-General and Member States on this issue has been signed by most organizations representing the people of Burma, located on the Thai-Burma border. The NCUB and the Burma Lawyers Council (BLC) encourage human rights organizations to gather evidence about the existence of crimes against humanity in the whole country.

Is justice a necessity or an obstacle to peace in Burma? The debate between justice and peace is old and universal. While a few individuals interviewed believed a thorough analysis of the pros and cons had to be carried out, very few drawbacks were mentioned by representatives of Burma, lawyers, or campaigners (such as the possible danger of jeopardizing political dialogue with the SPDC leadership). However several advantages were outlined. Some concerned justice itself: the need for victims not to be ignored, putting an end to impunity, and the signal which legal actions would send to the SPDC. Other advantages are external: some organizations believe that the international community would be forced to act very differently than it does today should an official investigation into the criminal activity of the SPDC demonstrate the existence of genocide, war crimes or crimes against humanity.

Based on a case of crimes against humanity, various options for international justice initiatives can be developed. Both NCUB and BLC strongly encourage initiatives both at the international level (International Criminal Court) and by specific countries where 40 universal jurisdictions is recognized¹. A case on “responsibility to protect” is another way of engaging the international community and especially neighboring countries.

“As Burma has not signed the important human rights conventions, it is necessary to appeal to the principles of international law on the basis of crimes against humanity. It



would require a resolution by the Security Council to set up such a Court.”

Mr. Aung Htoo, General Secretary of the Burma Lawyers' Council

The perpetrators of crimes committed in Burma, such as those responsible for the killings in 1988, have not yet been brought to Court. Yet international criminal law has improved a lot since 1988, and especially since 2002, with the Statute of the International Criminal Court (ICC) coming into effect.

The ICC may investigate acts of genocide, war crimes and crimes against humanity which have occurred after 1 July 2002. As the Burmese junta refused to ratify the Statute of the ICC, the people of Burma have no recourse of their own to have the crimes committed in their country investigated. However, a Security Council resolution could ensure that generalized and systematic human rights violations in Burma are brought before ICC. The Security Council can declare itself ready to invoke the jurisdiction of the International Criminal Court regarding the situation in Burma, as it is authorized to do under Article 13(b) of the Rome Statute.

A previous example of having a non ICC signatory state investigated by way of a Security Council resolution was Sudan, in the case of Darfur. In Resolution 1593 (2005), the UNSC referred the situation in Darfur to the Prosecutor of the ICC. In that case, NGO's contributed to the collection and documentation of the alleged criminal acts and then advocated for action.

There is little doubt that if all UN human rights bodies and non-governmental human rights organizations put together the evidence they have collected during the years, this would go a long way towards helping to prove the existence of crimes against humanity in Burma under the ICC statute^{2, 3}. The crimes committed during the crackdown of the “Saffron revolution” could be added to this evidence.

The first step towards an ICC referral is a serious investigation of the junta's criminal activity. All organizations interviewed on the issue agreed on the relevance of this first step. There are several potential ways to formally initiate such an investigation: Janet Benshoof (President of the Global Justice Center) suggests a Security Council Resolution for a Commission of Experts that would conduct this investigation⁴.



The international community has been watching the situation in Burma closer than ever since September 2007. It has offered the SPDC the opportunity of a Good Offices mission to nurture a tripartite dialogue with the National League for Democracy and ethnic groups. The SPDC must seize this last opportunity to be actively involved in the peaceful transition out of dictatorship by engaging in a genuine dialogue and starting an authentic political process of transition. However, if the SPDC do not do so, the possibility remains open for a prosecution of the Burmese military before the International Criminal Court. The SPDC should consider this issue very seriously, as initiatives preparing for criminal accountability are now considered as acutely needed by Burmese organizations, especially if the regime does not demonstrate rapid progress.

(Endnotes)

¹ The NCUB has recently published documents about the International Criminal Court's Definition of "Crimes against humanity" in five different languages (Burmese, Karen, Kayan, Mon, English,) on the front page of its website. The BLC has issued a statement with the Global Justice Center on the necessity for criminal accountability http://www.nationmultimedia.com/2007/09/29/opinion/opinion_30050677.php. BLC also published a paper on this issue in *Legal Journal on Burma*, the journal it runs; *The changing landscape of international law: The global responsibility to prosecute perpetrators of grave crimes inflicted on the people of Burma*, by Professor Janet Benshoof (President of Global Justice Center), August 16, 2007, available on <http://www.globaljusticecenter.net/janetlawpapalajornalexcept.pdf>

² ICC definition of crimes against humanity: http://www.ncub.org/FrontPageNews/Rome%20Statute%20of%20ICC_Article%207%20English.pdf

³ See, e.g. a list of reports compiled in Janet Benshoof's paper cited in the preceding footnote: Human Rights Watch, *World Report 2007: Burma*, Event of 2006, available at <http://hrw.org/englishwr2k7/docs/2007/01/11/burma14865.htm>; *Shattering Silences* (2004) by the Karen Women's Organization, *Shattering Silences: Ongoing Rape of Karen Women by the SPDC* (2006) by the Karen Women's Organization, <http://www.karenwomen.org/>, *Catwalk to the Barracks* (2005) by the Women and Child Rights Project and Human Rights Foundation of Monland (Burma) <http://www.rehmonnya.org/>, *License to Rape* (2002) by the Shan Women's Action Network, *Still Licensed to Rape* (2005) by the Shan Women's Action Network, <http://www.shanwomen.org/>, *System of Impunity* (2004) by the Women's League of Burma, <http://www.womenofburma.org/>, *No Safe Place: Burma's Army and the Rape of Ethnic Women* (2003) by Refugees International <http://www.refugeesinternational.org/content/country/detail/2892/>

⁴ *Ibid.*

**(D.2)****BLC General Secretary Travels to London for Meetings
on Criminal Accountability**

From February 18 - 22, 2008, BLC General Secretary U Aung Htoo traveled to London to increase awareness of the BLC's campaign for criminal accountability in Burma. Two American attorneys from the BLC's campaign partner, the Global Justice Center, also made the trip. This report contains some of the trip highlights.

Two meetings were held with members of the UK Parliament. On February 19, the BLC/GJC team attended a meeting at the House of Lords, chaired by Lord Judd, focusing on the situation of women in Iraq, but also addressing international legal mechanisms. The second Parliamentary briefing, held on February 21, focused on Burma. The BLC's presentation began with an update on the political developments in Burma, particularly Mr. Ibrahim Gambari's (UN Special Envoy) lack of progress in seeking dialogue with the military regime. The BLC General Secretary also presented the background of the "Saffron Revolution" in which Buddhist monks led the September 2007 demonstrations while reciting the "Myitta Sutra" of Buddha. He emphasized the importance of the rule of law, from both political and economic perspectives, and how the people of Burma are suffering due to the absence of the rule of law. He added that because there was no accountability for the Depayin Massacre of 2003, the SPDC was emboldened and has since committed numerous other crimes with impunity. While in the past, many leaders in the democratic movement were concerned that criminal accountability would harm chances for dialogue, their ideas are now beginning to change because the SPDC is demonstrating that it has no intent to enter into genuine dialogue. The BLC General Secretary expressed his concern that, without criminal accountability, additional heinous crimes could very well be committed in the future. One of the important aspects of the International Criminal Court (ICC) is complementarity, which means that the ICC must defer to national courts to adjudicate crimes if the national courts are willing and able. In his presentation, the General Secretary convincingly made the case that Burmese courts are neither capable nor willing to try SPDC officials for crimes against humanity, war crimes or genocide. Thus, the UN Security Council and ICC must take action.

On February 18, the group, along with Nwe Aung of the NCUB, met with the Director of the UK Campaign for Burma, Ms. Anna Roberts. They explained their efforts to gain cooperation and support from organizations and governments to bring the heinous crimes in Burma to the attention of the UN Security Council and the ICC. Ms. Roberts expressed the UK Campaign for Burma's interest



in exploring criminal accountability issues further.

On February 21, the BLC and GJC met with the Honorable Baroness Scotland, Attorney General of the UK. The BLC and GJC expressed their appreciation for the UK government's recognition of the Burmese people's challenge to the regime, but added that the statements need to highlight that Burma is a country in conflict (in fact, the world's longest running internal conflict) and address issues of redress for criminal violations of international humanitarian and human rights laws. They emphasized that the UK should take a leadership role in persuading the UN Security Council to refer the Burma crimes to the ICC, using Security Council Resolution 1325 as a tool (among other things, 1325 pledges to insure criminal accountability for gender crimes that occur during conflict).

The BLC General Secretary added that the Burma government violated its duty to protect imposed by SC 1325 when during the Depayin massacre they did not protect Aung San Suu Kyi from attacks aimed at her and in fact arrested her as being a "threat to peace". Moreover, the continued detention of Aung San Suu Kyi violates SC 1325 and should be denounced at the Security Council as such.

Also on February 21, the GJC and BLC met with Ms. Sappho Dias of the Burma Justice Committee (BJC). The BJC currently comprises 34 experienced UK lawyers, primarily from the Queen's Council, dedicated to working for the rule of law and justice in Burma. Ms. Dias is the granddaughter of U Rashid (former Education Minister of Burma prior to the 1962 coup) and a Barrister in Law. Ms. Dias expressed her enthusiastic support for the criminal accountability campaign and promised to try to get the UK Bar Association to issue a formal endorsement.

On February 22, the BLC and GJC met separately with two representatives from the UK Foreign Commonwealth Office (FCO), namely Director of War Crimes Emma Davies and Burma Desk representative Nigel Boud. The BLC and GJC gave their presentations on criminal accountability and the situation in Burma. They emphasized that national reconciliation and dialogue are always options and should not be discarded; criminal accountability is merely one piece in the proposed resolution of the problems in Burma. Prompted by the FCO officials' concerns, they also discussed some of the evidentiary and political obstacles to obtaining a UN Security Council referral. Ms. Davies agreed that the international community has an obligation to act in the case of Burma. In the meeting with Mr. Boud, the BLC General Secretary explained that, based on his observation of the fall of dictatorships in other countries, change will occur in Burma based on the struggle of the people, pressure from the international community, an economic crisis and internal conflict within the



regime.

Also on February 22, the BLC General Secretary met with the Burmese community in London, including representatives of Burmese women's groups, the Burmese Muslim Association and the NCUB. The participants talked about the relationship between political dialogue and criminal accountability. After talking briefly about the constitutional referendum issues in Burma, the BLC General Secretary explained how he believes the dictatorship will collapse. He encouraged the international Buddhist monks' organizations to foster discussions about the problems in Burma. He also emphasized the importance of the rule of law and that dialogue in Burma should be a tactic to achieve change, not the ultimate objective. He also clarified that there is no rule of law or genuine national reconciliation without criminal accountability. Without justice, he expects that Burma will see many coups in the future. The General Secretary explained how the heinous crimes of the past have not been dealt with effectively. He read a document describing the ransacking of the Ngay Kyar Yan monastery as clear evidence of the SPDC's abuse of monks. The Burmese monks and other attendees expressed their support of the campaign for criminal accountability.

While in London, the General Secretary spent time with the International Burmese Monks Organization. He met with the Venerable U Uttara, secretary of International Burmese Monks Organization. The monks there also expressed their support for the campaign.

* * * * *



(D.3)

[Below are excerpts from a Memorandum of Understanding signed on April 7, 2008, between the Burma Lawyers Council and the Network for Human Rights Documentation – Burma, to collaborate on the collection of evidence of heinous crimes and human rights violations committed in Burma.]



မြန်မာနိုင်ငံတော်
Burma Lawyers' Council



MEMORANDUM OF UNDERSTANDING

Between The Burma Lawyers' Council & Network for Human Rights Documentation - Burma

I. INTRODUCTION

This Memorandum of Understanding (MOU) is made through the cooperation of two organizations, the Burma Lawyers' Council (BLC) and Network for Human Rights Documentation - Burma (ND-Burma). Our objective is to prevent human rights abuses, promote human rights and justice, and eliminate impunity for the crimes committed against the people of Burma, in particular children, women, and ethnic groups. We would also like to educate people on how to collect accurate and high-quality information. Furthermore, the people should understand how legal analysis is important when collecting data about human rights abuses. This MOU also aims to help the BLC and ND-Burma understand each other, the benefits of cooperation, and how to collaborate at individual and organizational levels.

Both Parties agree to do their best to increase their cooperative activities and projects in the future.



III. PURPOSE OF COLLABORATION

1. To facilitate the emergence of networks which promote meaningful cooperation within the civil society organizations.
2. To support continuing improvement in the quality of information collected.
3. To promote standards of information legally admissible in courts.
4. To build capacity of people on how to collect information about human rights violations by using legal knowledge.
5. To deter repeated crimes and human rights abuses making perpetrators aware that people are collecting evidence, based on legal knowledge, and thus increase accountability and eliminate impunity.

IV. GENERAL AREA OF COOPERATION

The Parties will cooperate to gather evidence and documentation of human rights violations and heinous crimes that have occurred in Burma, such as crimes against humanity, war crimes and genocide.

...

On behalf of the organization I represent, I wish to sign this MOU and contribute to its further development.

For the Burma Lawyers' Council

For the Network for Human Rights
Documentation-Burma

U Aung Htoo

General Secretary of BLC

Mobile: 081 5330605

E-mail: aungthoo@csloxinfo.com

Date: April 7, 2008

U Tate Naing

Management Board of ND-Burma

Mobile: 081 2878751

E-mail: kotate_9@yahoo.com

Date April 7, 2008

* * * * *



PART E: RECENT BLC ACTIVITIES

(E.1)

A Brief Description of the Recent Work of the Legal Aid Section of the Burma Lawyers' Council

Today, there are Burmese people who work in foreign countries with legal permission from the Burmese military junta, as well as those who leave the country and work illegally as migrant workers. Currently, as a result of Burma's economic crisis, the rise in prices and the lack of work opportunities, the number of people who come to neighboring countries has been increasing. Especially in Thailand, people from Burma come regularly to work, where they are recorded as migrant workers. Regardless of how they arrive in Thailand, legally or illegally, they are migrant workers in Thailand. Burmese migrant workers are covered by international and Thai migrant worker laws, and thus should be protected by these laws. Therefore, the Burmese migrant workers need legal assistance to be able to work legally and get the protection of laws. To meet this need, the Legal Aid Section of Burma Lawyers' Council is providing legal assistance to Burmese migrant workers.

Objectives of the Legal Aid Section

The Legal Aid Section of the BLC implements its work based on following three objectives.

- to get social security for Burmese migrant workers according to law
- to distribute legal knowledge among Burmese migrant workers
- to provide legal assistance to Burmese migrant workers where necessary to overcome difficulties regarding legal processes

Activities of the Legal Aid Section

The Legal Aid Section of the BLC set up the following working plans in order to provide legal assistance to the Burmese migrant workers.

- providing legal counsel to migrant workers involved in legal cases,
- assisting in prosecuting cases,
- security aid for migrant workers,
- legal education,
- conducting workshops and training on migrant issues,
- publishing information about laws and events relevant to migrant workers,



- conducting legal marriages for migrant workers,
- validating the application forms for child adoptions,
- cooperating with other organizations in common areas

(1) Cases

For many reasons, a few of the Burmese migrant workers are involved in crimes in their work areas in Thailand. The cases handled by the BLC are primarily murder, rape, human trafficking and oppression by Thai employers. The workers want to complain to Thai authorities about the problems. Furthermore, they may face threats from business owners and other Thai people. To overcome these situations, the Legal Aid Section of the BLC provides assistance to Burmese migrant workers to seek justice for those who are victims of violations and crime, especially in physical security cases. The following are some cases that the Legal Aid Section has handled.



In 2003, six Burmese migrant workers were shot dead and then burnt with car tires by six Thai people. The Legal Aid Section of the BLC assisted in the prosecution of the murderers and bringing justice to the victims. The murders were sentenced to death in Thai court. The case is currently on appeal.

In November 2007, a Burmese migrant worker was convicted of rape. He used a knife to threaten his victim while her parents were out. Both defendant and victim were Burmese. The Legal Aid Section immediately informed the nearest police station of the case and brought the rapist to the police. They also sent the victim to the hospital for a medical exam. The defendant was convicted of rape and sentenced to 25 years and 1 month imprisonment.



In October 2007, a female migrant worker brought her niece with her to a textile factory located near the riverbank in Mae Sot. One month later, she told her niece to go back alone to Myawady, Burma because they could not get her a good job in Thailand. Shortly thereafter, her niece returned to Myawady. The aunt followed her there but could not find her. The niece's parents talked to the aunt but she did not take responsibility for the disappearance and fled back to Mae Sot. The niece's parents asked the BLC for help to find their daughter and bring the person responsible for her disappearance to justice. The Legal Aid Section sent photos of both of the women to organizations working on Burmese migrant issues. Later, information was received that the aunt was



at the Federation of Trade Unions of Burma. Under the assumption that she was responsible for her niece's disappearance, the Legal Aid Section filed the case at the Mae Sot police station. The investigation into the niece's disappearance continues.

While the Legal Aid Section of BLC deals with the security issues of Burmese migrant workers, giving them assistance in order to carry out justice, to some extent we are able to achieve our objectives but we also fall short sometimes. For example, in some cases the parties concerned are unwilling to bring the case to police. Under these circumstances, the Thai government has not set up any measures to provide security for the Burmese migrant workers. It has failed to create a situation for Burmese migrant workers to bring a case when they are victims of crime and other violations. The government also does not guarantee that the Burmese migrant workers can continue staying and working as usual while their cases are proceeding. Moreover, the Thai government does not help the Burmese migrants get attorneys for their court cases. Those are major obstacles in bringing the cases to justice. Additionally, the Thai government has failed to cooperate with parents and other relatives who come to Thailand to inquire into the death of their family member in Thailand. While the Thai government is exploiting Burmese migrants for its own advantages, there are few organizations providing assistance to Burmese migrants. This situation encourages the employers to oppress their Burmese migrant workers.

(2) Training and Workshops for Migrant Workers

The Legal Aid Section conducts, on average, two educational trainings and one discussion forum for migrant worker education every month. The trainings educate Burmese migrant workers primarily on labor and criminal law issues and rights. The discussion forums allow smaller groups of migrant workers to discuss the issues relevant to them and how to resolve workplace disputes or problems. The Legal Aid Section has found that legal education of migrant workers has a direct impact on the successful resolution of legal conflict in Thai factories and other workplaces. Moreover, many migrant workers travel back to Burma and share their knowledge there. The training subjects include Thai labor law, criminal law, forest law (upon request of the migrant workers) and other regulations affecting migrant workers' security in the workplace and in criminal situations.



Many of the workers who attend the training courses live very far from the training center. Nonetheless, the workers walk or arrange their own



transportation, indicating their strong enthusiasm and desire to attend the training. The workers also show their satisfaction with the courses by telling the Legal Aid Section that they want to extend the one-day course to two and sometimes even three days so that they can learn more.

The workers who attend the discussion forums explain the conditions and problems in the factories and fields, as well as giving ideas about how to overcome the problems.

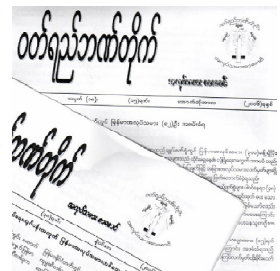
(3) Marriage Certificates

Burmese Migrants Workers come to Thailand for various reasons and get married in Thailand in their traditional way. The BLC provides assistance by issuing marriage certificates in order to make their marriage valid. The Legal Aid Section of the BLC is in charge of issuing legal marriage certificates to Burmese migrant workers.

In 2007, the Legal Aid Section issued marriage certificates to 80 couples. The Legal Aid Section has set up rules regulating the marriage proceedings. For example, the parties must fill out an application form prepared by the Legal Aid Section. The bride and groom must bring two witnesses along with them to the marriage registration center to attest to the marriage on the day the marriage contract is signed. The parties to sign the marriage contract cannot have drunk any alcoholic beverage or the proceeding will be canceled.

(4) Migrant Workers Education Program - Bulletins

A bi-weekly legal bulletin prepared, published and distributed by the Legal Aid Section, “Wut Yee Ban Taik”, is distributed to migrant workers in 18 factories and 3 libraries in Mae Sod, as well as in the Phangnga, Takwapar, Bangkae, Ranong and Bangkok regions of Thailand. 1000 copies of the bulletin are published and issued twice every month. The content of the bulletin mainly focuses on the information Burmese migrant workers may need to know. For example –



- (1) Laws affecting labor
 - International Labor Laws, including the ILO Convention
 - Thai Labor Law
 - Burmese Labor Law and Immigration Law
- (2) Crimes affecting the security of Burmese migrant workers (such as murder, rape and assault)
- (3) News and information relating to work permit cards issued by the Thai government



- (4) Cases involving the loss of workers' rights and ability to form unions.
- (5) Suggestions and guidelines to the workers on how to bring complaints to organizations working on labor rights issues when their rights are violated.

In response to the Wut Yee Ban Taik Bulletin, the Legal Aid Section receives many phone calls and letters from migrant workers. Migrant workers request that the bulletin be expanded to include more news and information. There is also a new question/answer feature that responds to questions submitted in the Legal Aid question/concern boxes that are located near factories and other places where migrant workers congregate. The responses give the migrant workers ideas about how to resolve their legal problems.

(5) Adoption

Abandonment of children by Burmese migrant workers in Thailand is increasing every year as a result of various social problems, such as low income and other survival difficulties. Some parents send their children to migrant schools, which provide accommodation and food, and then they never come back to take their children. Some women leave their children at hospitals after they give birth. Some parents die after they give birth. For these reasons, many children become parentless and are sent to charities that run orphanages.

There are people who with good intentions want to adopt the orphans, but there are also people who want to exploit the orphans. To increase the safeguards in the adoption process, the Legal Aid Section is collaborating with the Committee for Protection and Promotion of Child Rights (CPPCR) to produce guidelines and rules for legal child adoptions. In this process, the CPPCR is responsible for reviewing and approving the eligibility of the parents who want to adopt the children. The BLC is responsible for ensuring that the adoption procedures comply with applicable laws. Currently, the child adoption application forms are under discussion with legal organizations and human rights organizations from Thailand and other countries.

(6) Conclusion

Many Burmese continue to come to Thailand to seek jobs because of the economic collapse and the persistent increase of the price of goods in Burma. As long as there are Burmese migrant workers in Thailand, the Legal Aid Section will continue working on their issues pursuant to our established working plan. We welcome the further cooperation and accept the suggestions of other organizations that assist migrant workers; together we can improve the security situation of the workers and increase the services available to them.

20/3/2008

Legal Aid Section
Burma Lawyers' Council



(E.2)

Graduation Ceremony of the Advanced Internship Program In Human Rights and Law



On 12 December 2007, the BLC held a graduation ceremony for the seventeen successful students of the 2006-2007 Advanced Internship Program in Human Rights and Law. Parents and relatives of the students, members of the Peace Law Academy Academic Board, leaders of political organizations on the Thai-Burma border area, members of the BLC Executive Board, invited guests and the staff of the BLC attended the ceremony to honor the program and the students.

Notable speeches included the presentation by Colonel Hkun Okker, Executive Board Member of BLC, who said that opening a Peace Law Academy by the Burma Lawyers' Council is the first step in the preparation for democracy. He described how the Peace Law Academy graduates will benefit the organizations in the border areas and explained the importance of the graduates in the future federal union of Burma.

U Aung Htoo, General Secretary of BLC, explained that the aim of the Program is to promote the legal education of Burmese youths so that they become advocates, leaders and trainers. The various ethnic groups need guidance in practicing institution and civil society building. The speech recognized the contributions of the Academic Board Members and the visiting international lawyers who taught at the Peace Law Academy. He said that the legal knowledge taught in the law school was at least as good as that of Rangoon Law University.

General Saw Tamalabaw, President of the Presidium of the National Council of the Union of Burma, thanked all of the guests and mentioned how proud he was to attend the graduation ceremony. He supported the importance of rule of law, emphasizing that the country will never get peace and justice if there is no rule



of law and the country will lose unity and conditions will worsen. The graduating students' duty is to promote human rights understanding among the peoples of Burma, to create peace and to establish justice in the future federal union of Burma. Diversity will lead to disunity and the result will be the loss of democracy. Dr. Vinkat Iyer, Associate Professor of the University of Ulster, Ireland

and Member of the AIP Academic Board, expressed how proud he was to attend the graduation ceremony and also how he had the personal pleasure of teaching law to the students. He said that BLC has built friendships with a number of countries and has obtained the goodwill from people and organizations around the world, evidenced by the international lecturers who participated in the teaching. He was proud of the achievements of the law students in terms of the rule of law and institution building.

Dr. David Fisher, Professor of International Law, Stockholm University, Sweden and Member of AIP Academic Board, was happy to see the impressive progress of the studies in human rights and rule of law in the Peace Law Academy, which are essential for the future democratic Burma. Having seen in the media how the regime forcibly and brutally crushed the democracy movement, it is necessary to replace the authoritarian rule with a free society. In doing so, the knowledge of human rights and democracy must be widespread in the people. To change from regime rule to a people's democracy, the rights of children, women and workers must be respected, protected and understood clearly.

Words of thanks were given by AIP graduates Hkun Kaung Seth (in Burmese language) and Lway Poo Ngeal (in English language) to the Burma Lawyers' Council and the numerous other organizations and individuals who participated in the progress of Advanced Internship Program.

Finally, U Thein Oo, Chairperson of BLC, told the audience that this day was one of his happiest days because of the successful completion of the Advanced Internship Program and earning of "Diploma-in-Law" by the students. The students have learnt Rule of Law, Constitution, Civil Rights and Democratic Rights and they should continue to learn more with strong determination and perseverance for the sake of the people of Burma and their country. They should bear in mind that they are the leaders for their country and their peoples. Lastly, on behalf of BLC, he congratulated the students for successfully achieving the "Diploma-in-Law" certificate.

Burma Lawyers' Council

EVERYONE IS EQUAL BEFORE THE LAW.

Wisdom is power to transform the society into
a just, 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.

BURMA LAWYERS' COUNCIL
P.O Box 144 Mae Sod, Tak, 63110 Thailand
Email: blcsan@ksc.th.com, Website: www.blc-burma.org