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Burma Lawyers' Council Challenges Unlawful Detention by the SPDC Judiciary, Attorney General and Police Force in the Case of Min Ko Naing and 21 Other Democracy Leaders

The cases in brief

Throughout the summer of 2007, the price of general commodities was soaring in conjunction with the military government's increase in fuel prices. This had a disproportionately large effect on ordinary people in Burma, who earn less than a dollar per day. In August of 2007, Min Ko Naing, Ko Ko Gyi, Ko Pyone Cho, Jimmy, Htay Kywe, Mya Aye, Pannait Tun, Kyaw Kyaw Htwe, and Min Zeya, all leaders of the '88 generation uprising, protested by marching from Shwe Gone Daing Traffic Point to Tarmwe Market.

Min Ko Naing and these other prominent leaders had already served long-term prison sentences after the 8-8-88 Uprising. They were again arrested and taken from their homes at midnight on August 21, 2007 because of this more recent demonstration against the rising prices of commodities.

Min Ko Naing and the other leaders were produced for trial on September 9, 2008 at the following courts:

- (1) Rangoon Eastern District Court, charged under Section 4 of the Law for the Protection of the Stable, Peaceful and Systematic Transfer of State Responsibility and the Successful Implementation of National Convention Tasks, Free from Disruption and Opposition (SPDC Law No. 5/96);
- (2) Rangoon Northern District Court, charged under Section 33 (a) of the Electronic Transaction Law;
- (3) Dawbon Township Court, charged under Section 17/20 of the Printers and Publishers Registration Act;
- (4) Hlaing Tharyar Township Court, charged under Section 505/b of the Penal Code (making a statement with intent to cause fear to the public which may result in the committing of an offense against the State or public tranquility);
- (5) Thingangyun Township Court, charged under Section 17(1) of the Unlawful Association Act; Section 32/b/36 of the Television and Video Act; Section 24/1 of the Law Amending the Control of Money Laundering Law;
- (6) Insein Township Court, charged under Section 505/b of the Penal Code;
- (7) South Okkalapa, charged under Section 130 (b) of the Penal Code (libel against foreign powers);

(8) North Okkalapa Township Court, charged under Section 6 of Law Relating to the Formation of Organizations (SPDC Law No. 6/1998).

In all, there are 21 cases in 8 courts. The BLC has determined that all of the defendants were wrongfully arrested and are being detained illegally.

Legal Analysis

(1) In criminal cases involving cognizable offenses, the police force is the agent of the state responsible for custody before trial and the State is the prosecutor during trial. Pursuant to Code of Criminal Procedure Section 167(2) and Court Manual Paragraph 407, a judge can permit a defendant to be held in custody for up to 30 days while the police complete their investigation. This 30 day limit applies to offences punishable with rigorous imprisonment for a term of not less than seven years. If the police cannot complete their inquiry within 30 days, the defendant must be released from custody. Min Ko Naing and the other political prisoners were in custody for much more than 30 days while the police continued to investigate. They were arrested on August 21, 2007 and were held in custody until September 4, 2008. Their total period of time in custody was 378 consecutive days. This constitutes *wrongful confinement*, which is a violation of Penal Code, Section 340. Additionally, this detention was “imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law,” and thus a crime against humanity pursuant to Article 7(1)(e) of the ICC Rome Statute.

Further, the police went to numerous courts requesting separate remand periods for each case. The limit of the remand period for all combined charges against an individual is 30 days. These continuous remand periods are unjust and against the law.

(2) Court Manual Paragraph 405(2) provides the grounds for issuing a remand. Police Manual Paragraph 1351 precisely describes the procedure for the remand, investigation, and maintenance of a daily record.

Police Manual Paragraph 1347 defines when the investigation may be extended. Only if the reasons listed in the daily report justify an extension can a second remand be issued, provided that it falls within the 30 day limit. In the case of Min Ko Naing and the other activists, the first remand period was 14 days and the second was 14 days. All other granted remands that extended the custody period beyond 30 days were unlawfully issued. In conclusion, the extended detention of Min Ko Naing and the other pro-democracy activists of 378 days by the government clearly violates each of these laws. They have been illegally detained.

(3) Police officers involved in the investigation distorted the facts of the case in order to incriminate the defendants. These police officers must be dismissed according to procedures in the Police Manual and Penal Code, Section 177, which prohibits *furnishing false information*, and Section 218, which prohibits *public servants from*

submitting false records. The police must be prosecuted under these sections of the Penal Code.

- (4) Attorney General Rules Section 48(a) provides that the prosecutor in charge has the duty to check the validity of the remand form. The prosecutor must scrutinize and correct flawed police records and remand dates. Attorney General Rules Section 48(c) provides that the remand form and the records must be complete, correct and submitted to the Attorney General's office. If the remand forms are incomplete, the office must return them to the police to be corrected or completed. Attorney General Rules Section 53 provides that the Attorney General's office must review and ensure that all of the police reports and the case file are correctly completed. Attorney General Rules Section 58 provides that the period of remand ends promptly on the date stated and the case must be transferred to the court without delay. The burden of these duties is on the Attorney General to follow. In the case of Min Ko Naing and the others, the Attorney General's office did not check and correct the remand forms, thus permitting multiple remands that exceeded the 30 day period.
- (5) In conclusion, Min Ko Naing and the others were detained under an excessive remand period of 378 days. The military government's conduct in the judiciary, the Attorney General's office and the police force violated the existing laws and universally recognized rule of law principles.

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Note: Case facts and criminal sentences were acquired from Assistance Association for Political Prisoners (Burma).