

June 4, 2012  
ALRC-CWS-20-01-2012

Language(s): English only

HUMAN RIGHTS COUNCIL

*Twentieth session, Agenda Item 4, General Debate*

**A written statement submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organisation with general consultative status**

### **MYANMAR: Justice trade obstructing human rights in Myanmar**

The Asian Legal Resource Centre has in numerous previous written statements submitted to the Human Rights Council and to its predecessor described how the politicization and decrepitude of Myanmar's courts, policing and prosecution agencies are major obstacles to the enjoyment of basic human rights in the country. In the last year, as political conditions have begun to change, many organizations and concerned individuals have in turn begun to appreciate the extent to which the country's justice system is indeed a heavy barrier to the realization of human rights. In particular, many people have begun to take seriously calls to study and develop responses to the pervasive corruption in the system. Meanwhile, public debate about corruption has steadily increased.

In a meeting of the national legislative assembly on 24 April 2012, legislators debated the numbers of complaints brought against judges over alleged corruption. The legislators discussed how in the past year the government had received 77 such complaints, of which some 80 per cent had been found to be truthful complaints. The legislators urged that action be taken against judges found to have broken the law and passed a motion to set up a special committee to investigate alleged judicial wrongdoing.

While such debate is welcome, it is not in fact a new topic for public discussion. The issue of judicial corruption was in the news for many years under successive military governments; however, few people took it seriously, in part because it was trivial when compared to the amount of money being pulled in elsewhere across the state system, in part because of a well-grounded belief that nothing much could be done about it. Indeed, Supreme Court records that the ALRC has studied going back to 1994 reveal that every year scores of judges received official reprimands for official wrongdoing--in many cases for alleged acceptance of bribes or other forms of malfeasance--but that in only a handful of cases each year was punitive action, either departmental or criminal, taken against any of them. Therefore, the question at present is not one of whether or not the problem of corruption might be a subject for public debate, but what the current government will do about it that is different from its predecessor.

Unfortunately, so far we have little cause for optimism that a major change in thinking about corruption in the justice system is imminent. Like its predecessor regime, the current government seems to be concentrated on judicial corruption to the neglect of other parts of the system that enable judges to be corrupt. Judges in Myanmar lack political or corporate power with which to fight other parts of the state apparatus, and are an easy target for blame laying--indeed, the constant making of accusations against the judiciary over the last couple of decades was one of the methods that army officers used to ensure that the courts remained intimidated and inert before the executive. Although it is correct that the judiciary is highly corrupt, dealing with judicial corruption without taking into account the corruption of police--who historically have had the worst record of corruption--prosecutors, court clerks, judicial bureaucrats, bailiffs and others engaged in what the ALRC has described of neighbouring Bangladesh as a kind of "justice trade" will do little to resolve the problem, and may only exacerbate it by further undermining judicial credibility and slowing the development of judicial independence.

So as to explain the phenomenon with which we are concerned more clearly, and rather than talk about the extent and nature of systemic corruption in Myanmar in abstract terms, the ALRC wishes to draw the attention of the Council to a complaint that a citizen made recently to the country's president. It is only one of thousands of such complaints, and is unexceptional, which is precisely why the Centre is interested to present it as an example of how the justice trade pervades all aspects of the work of the justice system, not only those aspects of the system concerned with judges.

a. The complaint was made in 2012 by the wife of one U Lay Myint, who in March 2011 police in Shan State, in the country's northeast, arrested with two passengers for allegedly having in the vehicle in which they were travelling five pills that were found to be narcotic drugs, and the equivalent of around USD2500 in cash that the police claim was for the buying and selling of drugs. The complainant alleges that on March 28, following the arrest of her husband and the other men, Sub Inspector Hla Min Htun of the Panlong Police Station called her by phone and said that they had arrested a man who had confessed to planting the drugs out of revenge for a dispute over money; however, it would cost the equivalent of around USD3500 to get her husband and the other two accused released. The amount is high because the 1993 Narcotic Drugs and Psychotropic Substances Law sets high prison terms, including minimum prison terms, for convictions, and therefore the police and other officials can confidently extort a lot of money from people charged under the law to enable their release. In this case it may also have been high because the police found a large amount of money in the vehicle, which they would take as an indicator of the defendant's capacity to pay. The complainant says that when she asked the policeman to proceed with the case forthrightly he replied that "if you don't pay then it comes down to your luck" and hung up.

b. After around three days, the policeman called again and told Lay Myint's wife that the police had arrested a fifth man who had sold the fourth accused the narcotics, and that everything could be sorted out if the police received the money. Thereafter, she claims that she spent some USD15,000 in payments to various people in the course of the case, including a government official working as a broker; the police; the prosecutor; the chemical examiner of the narcotics, and court clerks--as well as the judge. Much of the money was swallowed up by routine payments for officials to do their day-to-day work. For instance, on 16 June 2011 at a hearing at the Taunggyi District Court she paid the court clerk USD20 to put the case on the docket--although a case is scheduled, without payment it may not be heard--and USD50 to the prosecutor to examine the case favourably. It also cost around USD8 to meet the three defendants in the lock up and give them food and other essentials. On July 14 she paid USD100 to the court clerks and to a police witness, and USD60 to the prosecutor, as well as USD4 to give four bags of cooked rice to the defendant in the lockup. On July 22, she paid USD110 to the court clerks, another USD50 to the prosecutor and USD5 for two meetings in the lockup. On September 2 the case was not heard because the judge did not attend court; however, she gave around USD20 each to court staff and police. And so it went on.

c. Payments to District Court Judge Wa Wa Lun alone in total allegedly topped USD4000 in the course of the trial, while for the court to acquit the accused, Lay Myint's wife alleges that USD2500 was paid each to the judge and to the prosecutor. Despite these payments, for some reason Lay Myint and his friends each received nine years in jail--possibly because the case was proving to be lucrative and the officials wanted to share it with their higher ups. The broker reassured her that the judge and prosecutor had decided that it was not possible to acquit but that they had already arranged it so that the men would go free on appeal and therefore that she should keep persevering with the case. U Lay Myint's lawyer submitted an appeal to the Shan State High Court in March 2012, but meanwhile his wife lodged her own complaints about this trade in justice.

We can see from this case the systemic character of corruption in Myanmar's justice system. It is clear that to treat corruption as essentially a problem of the judiciary is to miss the point, since although the

outcome of the case hinges on the judge's cooperation and complicity in the process, many other parties are involved and are earning money for the provision of a variety of services, which interlock and relate to one another in sophisticated ways. Consequently, an unsophisticated response to the problem--one of blaming judges and imposing further sanctions upon them, for instance--may force systemic behaviour to change, but it will not end the corrupt practices prevailing in Myanmar's courts, since they are too deeply entrenched and far too comprehensive.

As an alternative to an approach that fails to address the systemic qualities of corruption in Myanmar's justice system, the Asian Legal Resource Centre proposes that the Government of Myanmar consider:

a. Establishing an independent commission of inquiry comprising of local experts from academia, non-government agencies and retired judicial officers and bureaucrats with reputations for probity, together with advisors from international agencies, to conduct a full-scale investigation into alleged corruption at all levels and in all parts of the justice system. The commission should travel the country and hear from professionals, litigants and anyone else interested to tell their stories, since until the full nature and character of the problem is understood and publicly acknowledged, it will remain impossible to address. The commission of inquiry should present its findings publicly and extensive public debate should follow with a view to implementing its recommendations. The Human Rights Council, Special Procedures of the High Commissioner and other parts of the United Nations system could contribute significant expertise to an inquiry of this sort, were the Government of Myanmar willing to conduct one.

b. Inviting complaints of alleged police corruption via a special mechanism established for the scrutiny and investigation of such complaints, since although the police in Myanmar are also profoundly corrupt, public debate on corruption in the justice system under the incumbent government began has strangely touched little on the role of the police in the trade in justice. The conspicuous absence of talk about police corruption, in contrast to the publicity surrounding judicial corruption, casts doubt on the sincerity of the new government to tackle the problem in a significantly different manner from its predecessor.

c. Amending the Contempt of Court Act, 1923 and the Penal Code to ensure that persons who do lodge complaints of alleged judicial corruption are not punished through punitive counter-legal actions brought by judges. At present, the Contempt of Court Act has only three sections, none of which address the concept of contempt substantively. Therefore, judges have been able to use contempt liberally to pursue persons who have complained against them, as well as antiquated provisions in the criminal law for the insulting of a judicial officer. These laws are manifestly out of date and subject to all too easy abuse. Here also the United Nations system could play an important role in helping the authorities in Myanmar to revise and revoke laws that in fact do nothing to protect the credibility or integrity of the judiciary and that serve only as tools to enable the needless pursuit of people whose complaints, whether genuine or not, do not deserve to be punished with criminal action and imprisonment.

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***About the ALRC:** The Asian Legal Resource Centre is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. It is the sister organisation of the Asian Human Rights Commission. The Hong Kong-based group seeks to strengthen and encourage positive action on legal and human rights issues at the local and national levels throughout Asia.*

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