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

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

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

A statement recently released by the BLC, carefully analyzing each of the charges and the evidence against the Shan leaders, unequivocally concluded that none of the charges were justified based on the current laws of Burma, the verdicts violated numerous international human rights and recognized freedoms, the sentences did not fit the alleged crimes, and the convictions were political statements that were intended to punish and intimidate the opposition. The BLC found that the judge deciding the case regularly ignored important
legal provisions favorable to the defendants, misinterpreted the laws that nearly any act could be criminalized, and relied on blatantly inadequate evidence upon which to base the convictions. The verdicts clearly reflected the SPDC’s unlawful control over the judiciary in Burma.

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

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

Statement of the Burma Lawyers’ Council Regarding the Arrests of Peaceful Demonstrators in Burma

(February 23, 2007)

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

The Burma Lawyers’ Council (BLC) denounces these improper arrests by the ruling military regime, SPDC. The SPDC is fully obliged to publicly explain under which law and which precise section the demonstrators and journalists were arrested, the current
location of all detained individuals, and for how long they will remain in custody. It must provide assurances that none of them have been harmed in any way and provide the detainees all rights afforded under the law, including the right to due process, the right to seek the assistance of an attorney, the right to communicate with outside world, and the right to receive support of family members. Moreover, the entire process must be transparent and fully open to the public.

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

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

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

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

2. Corruption is rampant in the administrative mechanism of Burma. For instance, on October 19, 2004, the military junta charged its prime minister, General Khin Nyunt, of corruption. In May 2005, approximately 250 customs officials were arrested for corruption.1 In May 2006, eight customs officers as well as 10 from Merchant Associations were arrested in Mu-se near the China-Burma border for corruption.2 The same happened to Brigadier Aung Kyi, Deputy Minister in the Ministry of Social Welfare, and Brigadier Win Sein, Deputy Minister in the Ministry of Labor, against whom action was taken in November 2006.3 These are just examples of a system rife with corruption at all levels. As a result of the corruption, government authorities retain the wealth of the country while the vast majority of the citizenry lives in poverty.

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

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

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

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

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1 Source: Democratic Voice of Burma (DVB), Oct. 31, 2006
2 Source: Democratic Voice of Burma (DVB), May 7, 2006
3 Source: Irrawaddy News, November 11, 2006
Appeal from the Burma Lawyers’ Council to Police Officers inside Burma for a Neutral, Independent and Collaborative Police Force

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

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

3. Burma Police Manual, Article 1060, provides that police officers cannot have other jobs. Accordingly, any breach of this provision constitutes a criminal offence, punishable three months imprisonment or fine, not more than the amount of three months salaries, or both. This Article seeks to ensure the independence and neutrality of the police force by requiring officers to serve only one master. The current chief of the Burma police, Major General Khin Yi, is violating Article 1060. In addition to his police post, he is also a Major General in the army. He must either resign as chief of police or resign from the army. Other
countries, even military governments such as Thailand’s, respect the independence of the police. After the recent coup in Thailand, no military official took over the top police position.

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

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

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

(1) It has come to the BLC’s attention that the fighting between the Karen National Liberation Army (KNLA) and the Democratic Karen Buddhist Army (DKBA) has recently escalated, resulting in great hardship and suffering for the Karen people. The DKBA is notorious for crossing the Thai border to burn refugee camps. It has also been involved in well-documented human rights abuses against civilian populations and is known for regularly using forced labor and demanding food and money from villagers. Human Rights Watch has called the DKBA’s actions a “terror campaign.”
(2) Section 15(2)(a) of the Unlawful Association Act defines an “unlawful association” as an association “which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts.” The DKBA’s history of violence and intimidation is well-documented. Accordingly, the DKBA is clearly an unlawful association. The SPDC has declared the Karen National Union (KNU) and other armed ethnic resistance groups to be “unlawful associations”. Laws must be applied fairly, without discrimination. The SPDC cannot justify its failure to also declare the DKBA an unlawful association. Turning a blind eye to the unlawful acts of its allies and even supporting those acts, while misusing the laws to punish its political and military opponents, seriously undermines the SPDC’s claim that it respects the rule of law.

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

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

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2 Karen Human Rights Group, Consolidation and Control: The SPDC and the DKBA in Pa’an District (Sep. 7, 2002), http://www.khrg.org/khrg2002/khrg02u4.html; see also Karen Between a Rock and a Hard Place.
have no exception for SPDC senior military commanders and administrative officials as they are dealing with DKBA on a daily basis publicly. Assistance of SPDC to the DKBA and involving in a conspiracy with DKBA constitutes a serious crime. The SPDC’s violation of the law is not a mere legal technicality. Real lives are affected by the violence that the SPDC has encouraged and continues to fund. People have died. Houses have been destroyed. Livelihoods have been lost. The stability of the entire Karen region has been compromised.

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

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

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

2. Pursuant to Section 32 of Police Act and Section 38 of Rangoon Police Act, any Magistrate or District Superintendent or Assistant or Deputy Superintendent of Police, or Inspector or officer in charge of a police-station, may stop any procession or public assemblies for maintenance of law and order. Nevertheless, it can happen only when the concerned people violate the conditions of a license granted under Section 31(3) of Police Act and Section 37(3) of Rangoon Police Act.
Act. As the police did not allow application processes for licensees to this end contrary to provisions in Police Act, any public procession or assembly shall not be deemed to be an unlawful assembly. As such, any arrest of peaceful demonstrators is unlawful.

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

4. The Burma Lawyers' Council demands as follows:
   
   (a) The SPDC administrative authorities and police shall comply with the existing laws relevant to arrests and detenions;
   
   (b) They shall publicly declare the establishment of application process for licensees, to be granted for gathering of peaceful processions and public assemblies, along with necessary conditions for maintaining law and order; Otherwise, cease all unlawful arrests and detentions of peaceful demonstrators.
   
   (c) Demonstrators arrested on April 22 shall not be detained more than twenty four hours and; after that, release them immediately and unconditionally.
"Korean Court continued its trial on the case of Daewoo International"

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

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

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

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

**International Seminar on Human Rights in Japan**

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

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

1. ODA should be used to foster the livelihoods of local people, facilitate the emergence of civil society, support the independence of judiciary, and promote the rule of law;
2. In all ODA processes transparency should be practiced and it should open to the public;
3. In providing ODA, human rights norms should be applied, and all ODA related projects should be evaluated from the aspect of human rights.

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