



(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.<sup>1</sup> 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."<sup>2</sup>

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.<sup>3</sup> **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.<sup>4</sup> 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)**

<sup>1</sup> 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.

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

<sup>3</sup> 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.

<sup>4</sup> 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.

\* \* \* \* \*