# Rule of Law in Burma under SLORC/SPDC

*By the Central Legal Committee of the National League for Democracy.*

Rule of Law is amongst the foremost political objectives proclaimed by the State Peace and Development Council (formerly known as the State Law and Order Restoration Council). However the military authorities habitually treat members, supporters and sympathizers of the National League for Democracy, in a arbitrary manner which does not accord with The law.

Section 2(a) of SLORC/SPDC's Law No. 2/88 provides, in respect of the Law of the Judiciary that: "justice will be administered independently according to the law'. However in cases concerning members of the NLD, judgment is delivered in accordance with the directions of the military authorities, regardless of the provisions of the law.

Although Section 2(e) of the same law provides that "justice will be dispensed in an open court unless otherwise prohibited by law", judicial proceedings are frequently held in prison precincts. The trial judge cannot even inform the accused person's family or lawyer of the sentence which has been passed, without the permission of the military authorities. The military authorities have also been known to impose sentences orally at the time of arrest, before any trial.

At, accused has the right to conduct a defence and the right to appeal against the decision of the court in accordance with s. 2(f) of the above mentioned law. Furthers S 340(l) of the Code of Criminal Procedure (Act V of 1898) provides that "any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this code, in any such court, may of right be defended by a pleader (i.e. by a

lawyer)". This is reiterated in Para. 455(1) of the Courts Manual which provides "Every accused person may of right be defended by a pleader". In the majority of cases where the accused is a member of the NLD, access to and a defence by a lawyer is denied in flagrant violation of SLORC / SPDC's on laws and proclamations.

Maximum prison sentences are imposed on members of the NLD even in circumstances where the evidence is inadequate or inadmissible under the law.

Where an appeal or revision to a higher court is desired, the convicted person is required to a sign a power of attorney in favour of the person's lawyer granting the lawyer authority to file the Memorandum of Appeal or Revision within the prescribed period of time. However, when the relevant form is submitted to the prison authorities to obtain the signature of the convicted person, the form may only be signed and returned with the consent of the military authorities.

In matters prosecuted under s. 5(j) of the Emergency Act of 4950, the accused person may be detained for long periods while waiting for the approval of the relevant authorities for the prosecution to proceed. If the approval is not forthcoming, instead of releasing the accused, he or she may instead be prosecuted under .s. 505(b) of the same Act, which prohibits statements which are conducive to public mischief", and sentenced accordingly.

## Fundamental legal rights denied

Frequently an accused *is* denied hail, in circumstances in which bail would ordinarily be granted, under s. 496 of the Criminal Procedure Code by classifying the offence as *"Si-Man-Chet"* or planned". In such cases, even though the accused may not have infringed the law, the court is obliged to impose a penalty, usually of imprisonment. In such cases the appellate courts will usually take the line of least resistance and decline to rectify or interfere with the orders of the lower courts. The appeal or revision is dismissed. Consequently the Pillar of Justice is no longer a pillar of strength or a refuge for the oppressed hut is like a reed quivering in the wind.

## Sub-judice speeches

In special cases, a senior judge may convene a meeting with his subordinate trial judges prior to the commencement of the trial. At this meeting

the senior judge will express his or her opinion as to why the accused person should be found guilty of the alleged offence. Such a meeting amounts to a conviction before and without a trial.

## Retrospective laws

On 10 July 1991, the SLORC/SPDC promulgated law No. 10/91, which amended the *Hluttaw* Elections Law. On the same day SLORC/SPDC issued order No. 4/91 which enumerated offences in respect of elected representatives. Both the law and order were to have retrospective effect, thus violating fundamental and sacred principles of law

## The judiciary under the military

The military government of Burma has not abided by its own municipal laws nor by the international norms of justice. As it is neither an elected government accountable to the people nor a popular government ruling under a constitution accepted by the people hut a government that has usurped power by military force, there can be no rule of law and the independence of the judiciary is a mere scrap of paper, a mockery of the system.

Arbitrarily arresting members, supporters and sympathisers of the NLD who are simply working for democracy out of time belief and convicting them under laws meant for common criminals contradicts internationally accepted principles and norms of justice.

Members, supporters and sympathisers of the NLD who are jailed are frequently transferred to prisons far away from their homes. As a consequence, some imprisoned NLD members are unable to see their families for months who provide important moral support as well as the essential dietary supplements and medicines necessary for survival in the penal system under SLORC/SPDC.

Some prisoners of conscience are not released on the completion of their sentence.

## Pyithu Hluttaw or Parliament

The *Pyithu Hluttaw* (Parliament) Election Law defines the word *Hluttaw* as the *Pyithu Hluttaw* and s. 3 provides that the *Hluttaw* shall be formed with the elected representatives of the various constituencies in accordance with the law. However, the *Hluttaw*, which was elected in 1990,

has still not been called or convened. By comparison, the Parliaments of democratic states are usually convened within weeks of the elections. SLORC/SPDC's refusal to call the *Hluttaw* is a blatant refusal to respect the wishes of the people.

Suppression of the Rightful Activities of political Parties and Persecution of members of the NLD.

Under s. 2(b) of the SLORC/SPDC Law No. 6/88 relating to the formation of political parties, a political party is defined as a party which has a political belief upon which its activities are based. Yet members of the NLD are not permitted to engage in legitimate political activities.

Occasions such as the commemoration of the anniversary of the founding of the NLD and the anniversary of the resounding victory by the Nt1) in the 1990 elections, may be considered as ordinary activities for a legally registered party. However, members of the NLD are subject to severe harassment by the authorities on these occasions. Delegates to the commemorative conventions are detained, those who have to come from the districts are denied bus and train tickets, the delegate's spouses are detained if they leave the convention, access to the venue of the conventions is blocked, delegates arriving for the conventions are forcibly turned away or taken away by car to a distant suburb. NLD delegates who are detained are charged under various laws such as s. 5(j) of the 1950 Emergency provisions Act (the law protecting the state from destructive elements), s. 505 (b) of the Penal code, i.e. statements conducive to public mischief, and s. (1) (f) (g) of the Habitual Offenders Restriction Act (HORA) which applies to habitual criminals and thieves, vagabonds, and those who do not have an ostensible means of livelihood.

In some police stations detained members of the NLD were kept like common criminals and in some instances were subjected to inhuman treatment. Female members of the NLD were put in the same cells as prostitutes and criminals, and on occasion held together with male detainees.

The authorities subjected elected *Hluttaw* representatives of the NLD who were detained to threats and intimidation, and used various unlawful means to compel them to resign as the elected representatives of their *Hluttaw* constituencies.

The authorities constantly interfere in the international matters of the NLD and restrict its activities such as the formation of organisational committees, the delegation or suspension of duties and responsibilities. Recruitment of new members is prohibited, party meetings are prevented or restricted.

It is prohibited to open an office of the NLD or to put up NLD signboards. Signboards which were put up with the permission of the Elections Commission were forcibly removed by the authorities. It was not permitted to fly the flag of the NLD at several NLD offices and has been forcibly removed. Owners of the offices, leased by the NLD, are threatened and coerced to withdraw their leases.

The NLD is not permitted to print, publish or distribute any papers. Documents that have been seized during raids on NLD offices are not returned. Legally published directives and documents setting out the policies of the NLD are seized as exhibits and those in possession of such papers are prosecuted. The distribution of video recordings of conventions and commemorative ceremonies held by the NLD are prohibited. A law was promulgated in 1996 to make the distribution of such videos an offence carrying a stiff prison sentence.

The wearing of the (unofficial) uniform of the NLD by an organisational committee in the *Irrawaddy* division was deemed to constitute an incitement to cause unrest disturbance of the peace and tranquility of the country. Every member of the committee was prosecuted and sentenced to imprisonment. The chairman of the committee has since died in *Myaungmya* Prison from a lack of medical care.

The authorities place difficulties in the way of business and social activities of members of the NLD. Matters relating to tax and revenue, transport and communications are subject to close scrutiny and the slightest mistake usually results in prosecution and imprisonment.

Members of the NLD are unjustly evicted from state owned apartments. In some instances house owners are prevented from accepting members if the NLD as tenants. There have also been cases where guest houses were ordered not to rent rooms to members of the NLD.

Civil servants related to members of the NLD have been arbitrarily transferred to remote areas NLD members who are medical practitioners have had their licenses to practice medicine withdrawn. NLD lawyers have also had their licenses suspended and some have been struck off the roll of lawyers.

## Instigation or perpetration of violence against members of the NLD

On 9 November 1996, a convoy of cars carrying U Tin U, U Kyi Mating, Daw Aung San Suu Kyi and some elected representatives was attacked

by a group of about 200 persons with various weapons in broad daylight.

A first informational report was lodged with the *Bahan* Township Police Station but in spite of the fact that some security officers were present at the time of the attack, not a single person has been known to have been arrested in connection with the incident

The NLD, with a view to bringing out the truth and preventing any similar incidents from taking place in the future, proposed to the authorities that an independent enquiry panel comprised of respectable and trustworthy citizens be formed and that their findings be published for the benefit of the general public, hut the authorities failed to give any response.

A minister of the SLORC/SPDC government, who is also a secretary of the union Solidarity and Development Association (USDA), has openly called for the "elimination" of Daw Aung San Suu Kyi. He later explained that to eliminate meant to kill. The NED made an official request to the chairman of the SLORC!SPDC [or appropriate action be taken for this blatant violation of Burmese criminal laws, however the authorities imply turned a blind eye to the conduct of its minister. (It is worth noting here that the USDA was formed under a notification that enables members of the civil services to join the association. Thus a notification has been allowed to override a law, being Law No 6/88 promulgated by SLORC/SPDC, which prohibits all public servants, including military personnel, government servants, the police and all those receiving salaries from public coffers, from joining associations.)

On 22 November 1997 the Chairman of the Mandalay Division organizational committee of the NLD, who is also art elected *Pyithu Hluttaw* representative, was attacked and robbed on the Mandalay-Rangoon Express Train. Although the incident was duly reported to the police no action has been taken.

Local authorities have made threats against the life and security of members of the NLD living in their jurisdictions. Members of the NLD have also been conscripted as porters for the armed forces and several members have lost their lives as a consequence

## Forced labour

Forced labour is a daily occurrence in all parts of Burma. Action is taken under s. 2 of the Village Act against those who refuse to supply "voluntary" labour to build roads, railways, bridges, dams and other constructions when ordered to do so by the authorities. Severe terms of im-

prisonment are sometimes imposed.

It is often difficult for households to supply the labourer required of them without substantial economic loss. During the hot season and during the rains, the health of labourers often suffers from the weather and from the lack of clean drinking water. Frequently the food and shelter is inadequate. In some areas, lives have been lost due to ill health and to snake bites.

Labourers are subject to harsh treatment and often required to provide food and shelter at their own expense. At the completion of their work quota, the labourers may have to bribe the authorities before they can return home. The ILO should take steps to prevent a misuse of Labour which is contrary to the spirit and letter of the ILO conventions as soon as possible.

## General

There is no freedom of thought, expression or association in Burma under SLORC/SPDC. The laws and notifications imposed by SLORC/SPDC are sometimes contradictory, as has been illustrated in some of the cases above. Law No. 5/96 represents another contradiction. After declaring openly that it was the duty of all citizens to participate in the drawing up of the state constitution, the law prohibits the drawing of a constitution by anybody outside the National Convention convened by SLORC/SPDC.