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Struggle of Democracy Activists and Lawyers in Burma to Achieve Fair Trial Rights and Justice During Unjust Court Proceedings

[The following is a transcript of court proceedings in Burma in which democracy activists were convicted of serious crimes. This transcript was obtained by the Burma Lawyers' Council from sources inside Burma.]

Time: 12:30 p.m.

Date: 24 October 2008

Place: **Special Tribunal** at Insein Prison

The trial took place at the Northern District Court presided over by two judges. The layout of the court had been changed. About 30 uniformed policemen were seated behind the area reserved for the '88 students, not on either side of the students as usual (the policewomen were dressed in civilian clothes). Four trucks loaded with policemen bearing shields were placed around the court. Fifteen minutes later, the '88 students appeared in the court.

When all the students arrived, the judges took their places. The law officers (prosecutors) then took their places. The plaintiff, the Deputy Police Commander Zaw Min Aung, also took his place in the witness box. The trial for criminal cases nos. 90/91/92/93 and Electronic Act 33—a then began.

One of the student leaders stood up and said, "Previously the District Court allowed family members to appear at the hearing and this court is the same rank with the District Court and the judges must act according to the law, not simply as they wish. Now this permission for family members to appear in the court has been withdrawn. The court must reflect the dignity of Burma and not make any one-sided decisions. The judges' salaries are from the taxes paid by the family members and the public."

Ko Zay Ya

"We are working for democracy and we are suffering from violations of human rights and citizen rights."

Ma Thin Thin Aye

"I demand to meet with my family members before the trial because I heard that meeting them was not barred."



Ko Thet Zaw

“My family’s dignity must be respected and I demand a transparent and fair judiciary system for the dignity of the whole nation.”

Ko Jimmy

“I demand that the court stops the proceeding. The court should observe the case from our side as well. We are democracy activists and are able to obey the law. What about the dignity of the court? Is this trial one-sided or is this an open court? We did not express anything about the issue of hand-cuffing previously. After the presence of family members at the trial has been solved, the hand-cuffing issue must be considered. We are all working for national reconciliation.”

Law Officer

“The present special tribunal was created under Criminal Procedure Code Section 1781. In the course of this special proceeding, given that the case is particular in accordance with Criminal Procedure Code Section 3522, I am applying for an order to prevent the public from entering the court.”

Ko Ko Gyi

“Honorable Judge, we have been detained for 14 months. The authorities enjoyed to charge us under many sections of the laws, connect unrelated people to the cases and invite many unfamiliar people to the trial. There was no arrest



warrant, no authorized remand and whatever they like has been done. They permit family members to appear in the trial, handcuff the student leaders when coming to the trial and say that having the family members attend means it is an open court. Why doesn’t the prosecutor read the sections mentioning the court as a special tribunal beforehand instead of reading them now? U Nyan Win mentioned that the process shall be participatory for all in the presence of the international

community and your regime also said that Daw Aung San Su Kyi was not arrested but detained for security. You have to reflect on your own dignity. U Win Aung is now in the prison because he said ‘reflect on your own dignity’ and also Colonel Khin Maung Cho is in the prison. You must choose between ‘I will do whatever I like’ or ‘dignity’ or ‘courage’.”



Ko Myo Aung Naing

“Who has withdrawn the permission for the family members to be present at the trial, as was allowed before? Can you say whether your court is independent and a just court or not during the period of transition to democracy as you declared to the international community?”

Ko Mya Aye

“You said you are not barring the guests and also sitting individually at the trial and sentencing was by the order of higher authorities. Then you should decide whether you are a staff or a slave.”

Ko Nyan Lin

“When conducting the sentencing process you should aim to meet the democratic process of the nation. We arrived here by solving the answer of politics. We were arrested during the process of checking guest lists and the authorities did not submit the case to the court within 24 hours and remand was made in January and submitted to the court on August 27. These processes are violating the law. After violating a variety of laws, the case was submitted to the court. The judicial principle is to adjudicate the cases in public. There will be a problem if you act out of fear and so you must consider it from the basis of democracy. We need to have the appearance of democracy.”

Lawyer U Khin Maung Shein

“The prosecutor has quoted the law. Section 352 states that the hearing of any offence shall be done in open court, to which the public shall have access. Section 2(e) of the Judiciary Act of 2000 prescribes the administration of justice in public. The Code of Criminal Procedure does not override the Judiciary Law. We propose that you decide on sentencing only after considering these facts.”

Ko Ko Gyi

“The guest matter was confirmed in the first appearance in the court. A guest can visit on Saturday and Sunday. What is extraordinary in this case? Tell us the peculiarities that led to restrictions according to the law.”
(The judge is preparing for sentencing.)

Judge U Thaug Nyunt – “Let’s start sentencing.”

U Than Zaw Aung (a young lawyer)

“Judge, do not make the sentencing. I have to address something. I am Higher Grade Pleader Than Zaw Aung and I have the Power of Attorney authorized by Ko Htay Kywe, Ko Hla Myo Naung and Ko Aung Thu. Concerning the presentation of the prosecutor ...
(Judge interrupts the argument.)
The judge – Mention your name.



U Than Zaw Aung

My name is Than Zaw Aung. This is the second time I am saying my name. I have the Power of Attorney. My HGP license number is 23801. The prosecutor said that this case is particular. What are the particularities? These types of cases are usually tried at the ordinary courts. Paragraph 8 of the directive on judges to avoid wrongful conduct signed by U Aung Toe on 6 October 2008 mentions that ‘the judges have to consider with sympathy’. The Article 10 of the International Declaration of Human Rights states that ‘Everyone is entitled to a public hearing.’ My argument is to consider sentencing with this in mind.”

Ma Thin Thin Aye

“This court examines the old case by changing the case number. This court has already issued an order and so it is not necessary to add another order.”

Ko Min Ko Naing

“Then the judge is acting like the palm of a hand (always changing). I don’t think I am coming to the court because I saw many riot-dispersing forces outside the court and it looks like a battlefield. Using many threats, the authority of the court is saying many things, one after another. Why is the prosecutor so active? A vocabulary was written as army dog. A man in the room with a black Myanmar jacket was granting the remand. We were sentenced in the military tribunal by the man with a Burmese turban under the flag. Now sitting with a satisfied manner under the flag, the man with the Burmese turban is threatening. Orders were being given (by anonymous persons) behind the court.”

Ko Aung Thu

“What you are doing is deviating from policy when the country is on the brink of collapse. Reconsider the Constitution. While the state is enjoying protection with reference to the Constitution, the citizens are lacking such protection under the same Constitution. Is the court really the court in essence? It is necessary to temporarily suspend all courts. Reconsider the forced judiciary. A resistor is needed. We, politicians, are using the state judiciary as a platform for national reconciliation. I demand that the court suspend the order and make sentencing only after consideration.”

Ko Hla Myo Naung

“As soon as a battle is commenced, the ‘truth’ is lost. There have been deviations from the original principles. A reporter of Newsweek magazine asked the Prime Minister of China, Wan Ja Pong, about the political reformation of China whose population is 1,300 million.

It is usually realized that independent and just elections and the government for which people desire are needed in order to achieve democracy. It is also



recognized that the existence of a judiciary which applies reasonable judicial norms is required. The question, however, is, will everything be achieved only if we have a fully operating judiciary?

The existing laws will be finished with this judiciary. The students here were in prison for more than 15 years. The criminals they encountered there were more than the number of the accused the sitting judges met. Only when a fully operating judiciary exists; it is not sufficient for the emergence of civilized society that values human dignity.

A prestigious country will not be achieved if there is no social capital. Due to the threat of security guards, the judges and the lawyers from both sides are lacking social capital. Except those who were too emotional, there was no violence in the country at the time of the August 1988 uprising, which lasted more than 40 days. The impact of this non-violence was that the people deserve democracy. The violence was due to the negligence of the undutiful Burma Socialist Program Party. Today human ethics have disappeared.

The students in the court have not participated in an election after 1988 and have been in prison. After the release from prison in 2005 they were charged under various sections of the Act for all of their activities, except eating and sleeping. When they were out of prison they realized that no progress had been made in society and they decided to sacrifice by becoming involved in the disagreement between the government and the opposition. They attempted to raise a flag on national reconciliation and encouraged dialogue, aiming to achieve democracy. Unfortunately, they were criminalized under various laws that were unconcerned with the present aim of establishing a nation. An independent judiciary as prescribed in the law is necessary. The prosecutor is the state. The trial should be conducted in public if you have courage. You stop granting our rights only at the stage of the meetings of the families. Give judicial transparency and if not, declare it publicly. Otherwise do not continue the proceedings.”

Ko Thet Zaw

“The issues should not be dealt with under the camouflage of the judiciary to have resulted in the situation that the judiciary in dispute is violating. It is not true that I am articulating given the fact that I dare not live in the prison. Try to act with dignity. Apply the trial procedures fairly and openly. You can do as you like but maintain the national prestige.”

Ko Ko Gyi

“I am not pleading for opportunities. We do not want to face the court in this form. We arrived here because of differences in ideas. We arranged to discuss things with authorities at a higher level than this. It is the period of reconciliation. When we were released in 2005, the government claimed that we were



incorrectly detained by National Intelligence. A person, imprisoned for 16 years, was compensated only with the expression of the government in one sentence. Is that right?”

The media asked us in the prison about our living conditions and we didn't answer back in order to promote national reconciliation. One example was when the USDA threw us into trucks and Swanar Shin put us in Dyna cars, with a crowd of people. We were not criminals. We expressed our opinions. Did U Zaw Min Aung (a plaintiff – deputy Police Commander) sue us by himself? The effective laws were abrogated or cancelled by staging a military coup. Tell me whether I am right or wrong.”

There are many things to say from the perspective of the law. The declaration of Printing Act 17(20), forgetting the confrontation in politics and laws announced by one party dictators of 1962, is an example. We were going toward democracy and have buried our bodies in the prison brick walls. What is happening to society that our people are ashamed in our country and abroad? Did the present display of ceiling fans, flags and the materials match with democracy? Any condition we are welcome. [sic]”

Ko Aung Thu

“Section 446 of the 2008 constitution states that the existing laws shall remain in effect until and unless they are repealed or amended by the Pyidaungsu Hluttaw. The prosecutor pointed out that we were opposing the constitution and the development of *lawka pala*, (the principle which prevents the world from falling into chaos). I am not arguing for the release during the dispute period. However, I am advocating for national reconciliation.”

Advocate U Aung Thein

“I am advocate U Aung Thein and my license number is (_____). The Code of Criminal Procedure does not override the judicial principle. Rejecting the judicial principle, you are pointing out the criminal procedure; implying that the condition and time are neglected.”

Lawyer Daw Khin Htay Kywe

“It is against the Judiciary Act of 2000, which provides that the administration of justice shall be done in public except those prohibited by law. The term "those prohibited by law" refers to sexually oriented cases such as rapes.”

The judge (in a soft tone)

“According to the exception of Criminal Procedure Code 352, I ordered that the presence of outsiders be disallowed except for security personnel, prosecutors and defendants' lawyers.”



Ko Ko Gyi

“The presumption of innocence is the principle which should be enjoyed by the suspects. The plaintiff said that the families were allowed to meet. On 5-9-2008 an order was announced that there were people related to defendants and were allowed to enter the court.”

The judge

“Previously it was one judge sitting in the court but now two judges are sitting.”

Ko Mya Aye

“The judgments of the court were not those rendered by pedestrians randomly, in an irregular manner. Having rendered judgment, they should not be converted from *ka,gyi* to *ya-pet-let* (court orders should not be “inverted” or “turned upside down”). If your judiciary can be put to the test, I demand that justice be made in public.”

Prosecutor

“The statements of the accused damage not only the judiciary of the state but also the dignity of the outsiders. Their statements violate Penal Code section 228. As such, they legal action shall be taken against them, I apply.”

Ko Myo Naing Aung

“Objection in using the term ‘accused’.”

Prosecutor

“The accused means the one who is under the administration of justice.”

Ko Htay Kywe

“If you want to send someone to prison, recite the multiplication table. I reached this office 17 years ago and there were three men wearing uniforms. The sentencing was the same as the bench of Mayangon’s judge. The laws practiced by the administrative authorities were not just laws but were unjust laws. We objected to handcuffing but it was rejected. We asked for an open court but it was also ignored. If it is merely an unjust proceeding, there is no need to cooperate.”

Ko Myo Aung Naing

“It is kidnapping during the day.” (At that time, the judge gave a date, 27-10-2008, and left the bench.) (Ko Myo Aung Naing narrates what happened next.) “A police man with two stars on the shoulder of his uniform led the shouting, ‘Stand up and pull them!’ The students told each other to keep sitting and the police showed that they were going to threaten them.”



Date: 27-10-2008
Place: Northern District Court
Law: Electronic Act (33-A)

Prosecutor

“I apply to take action against Min Ko Naing, Ko Ko Gyi, Hla Myo Naung, Htay Kywe, Mya Aye, Pyone Cho, Aung Thu, Myo Aung Nang and Nyan Lin under Penal Code Section 228, charge them separately, and withdraw the previous cases filed under Criminal Procedure Code Section 494. Continue examining the plaintiff deputy Police Commander Zaw Min Aung.”

(Giving date of 29-10-2008.)

Date: 29-10-2008
Place: Northern District Court
Law: Electronic Act (33-A)

The judges took their places at the trial. The students were not produced to the court. A Burmese turban and books were put on the lawyer's desk and the lawyer went out. After coming back, the books and the turban box were sent outside and a police officer said there is a trial and lawyers are not allowed to enter. The nine students were presented to the court. Divisional Judge U Win Myint and two prosecutors entered but their voices could not be heard since they were far away. A little later the judge and the prosecutor went out and the nine students were called away.

1:00 PM – 14 students including Ko Jimmy were presented to the court. Ko Jimmy and the rest of the students withdrew their power of attorney.

Date: 30-10-2008
Place: Northern division court
Law: Electronic Act (33-A)

Twenty-three suspects including Min Ko Naing were presented to the court. Ko Min Ko Naing and nine students were wearing blue prison uniforms. Ko Min Ko Naing said, “Yesterday Judge U Win Myint came and asked three times whether we were guilty or not and when no answer was given, he said silence means agreement and ordered 6 months imprisonment under Penal Code Section 228.”

Date: 31-10-2008
Ko Min Ko Naing and nine students were transferred to Maubin Prison between 6:00 and 7:00 a.m.



(Endnotes)

1 Notwithstanding anything contained in section 177, the President of the Union may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division:

Provided that such direction is not repugnant to any direction previously issued by the High Court (* * * *) under this Code, section 526.

(The original provision of section 178 has been included by the Burma Lawyers' Council for reference.)

2 The place in which any criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open court, to which the public generally may have access, so far as the same can conveniently contain them.

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

(The original provision of the section 352 has been included by the Burma Lawyers' Council for reference.)

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