



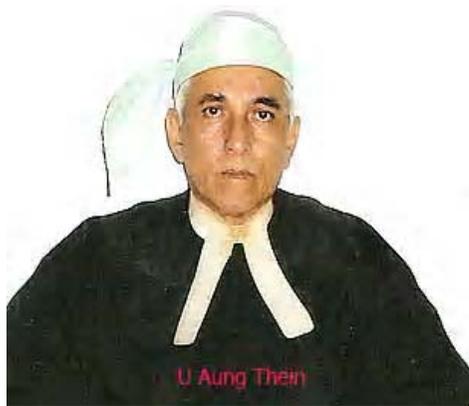
Part A: Persecution of Lawyers

(A.1)

Burmese Lawyers Sent to Prison for Demanding Fair Trials

For the first time in Burmese history, political detainees and their lawyers are fighting for fair trials, including the right to control defense witness lists, hold private attorney-client meetings and have a trial open to the public. This article describes the courageous struggles, at great personal risk, of some of these lawyers fighting for justice inside Burma.

On November 7, 2008, prominent NLD lawyers U Aung Thein and U Khin Maung Shein were convicted of contempt of court and sentenced to four months in prison while serving as the defense lawyers for several political activists, including monk U Gambira and comedian and activist Zarganar, arrested for



their participation in the August 2007 demonstrations against rising fuel and commodity prices. The trial of the political activists was marked by verbal and written complaints from U Gambira and the eleven other defendants that they were not receiving a fair trial. According to articles published in Burmese, the activists openly voiced their opinions that they did not feel they were being treated in accordance with fair judicial procedure, including the fact

that their families were not permitted to attend the trial. The charge of contempt of court for the lawyers came after U Aung Thein and U Khin Maung Shein signed their clients' request to dismiss them from their positions as defense counsel.¹

The lawyers were accused by Hlaing Township Court Judge Daw Aye Myaing of violating Section 3 of the Contempt of Courts Act (India Act XII, 1926)² on October 30, 2008 and their case was sent to be heard by the Supreme Court. The lawyers argued their case in front of the Supreme Court on November 6, 2008. Sources describing the hearing report that the Justices were holding the lawyers responsible for their clients' opinions voiced in court,



despite the fact that the lawyers remained quiet.³ On November 7, 2008, the Supreme Court issued a judgment order finding U Aung Thein and U Khin Maung Shein guilty and sentencing them to four months in prison. They were arrested in their homes that night.

In a similar case, lawyers Saw Kyaw Kyaw Min and Nyi Nyi Htwe were accused of contempt of court by Judge U Thaug Nyunt of North District Court,



U Khin Maung Shein

Yangon Division. While Saw Kyaw Kyaw Min fled shortly thereafter, Nyi Nyi Htwe was convicted on October 29, 2008 to six months in prison. The lawyers were representing NLD youth Yan Naing Htun, Ko Aung Min Naing (a.k.a. Mee Tway), and Myo Kyaw Zin, who had been arrested for their involvement in the September 2007 demonstrations. As part of their clients' defense and upon their clients' instructions, the lawyers submitted a witness list to the court that included Khin Yee (SPDC police chief) and Kyaw San (Minister of Internal

Affairs). When the judge saw the names, he told the lawyers that they could not include the two SPDC officials on the list. The lawyers responded that under Section 211 of the Code Criminal Procedure, their clients had the right to list the witnesses that they wanted to call. The judge then told the lawyers that they had to control their clients and that they should have told their clients not to include the SPDC officials. When the lawyers said that their clients had this right and they must follow their clients' orders, the judge held the lawyers in contempt of court.

The actions of U Aung Thein, U Khin Maung Shein, Saw Kyaw Kyaw Min and Nyi Nyi Htwe, however, cannot reasonably be construed as worthy of the charges and punishments they were given. The clients, not the lawyers, complained of the unfairness of their trial and demanded that SPDC officials be put on the witness list; the lawyers advocated on behalf of their clients, as is their duty, but did nothing to disrupt the courtroom proceedings. Further, in the case of U Aung Thein and U Khin Maung Shein, the clients had a right to dismiss their lawyers when their lawyers ceased to be able to provide an adequate defense. U Gambira and the other activists were of the opinion that they would meet an equally unjust punishment whether they had defense lawyers or not, and therefore dismissed their lawyers.⁴ U Aung Thein, U Khin Maung Shein, Saw Kyaw Kyaw Min and Nyi Nyi Htwe should not be punished



for fulfilling their duties as advocates and acting in accordance with their clients' wishes.

In addition to the charge being unwarranted, the conviction of the lawyers contravenes both the "Statement of Principles of the Independence of the Judiciary," which was signed by Chief Justice of Burma, U Aung Toe, at the 6th Conference of the Chief Justices of Asia and the Pacific in Beijing in 1995 and the SPDC Judiciary Law No. 5/2000, Chapter II, Section 2. The Beijing Statement explicitly defines one of the judiciary objectives as "to administer the law impartially among person and between persons and the State."⁵ It further asserts that this 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."⁶ Similarly, the SPDC Judiciary Law No. 5/2000, Chapter II, Section 2, states that, among other principles, the administration of justice should be based on the principles of "administering justice independently according to law."⁷ In an authoritarian government such as that in Burma, where the military regime has the power to appoint and dismiss Supreme Court Justices at will, as well as imprison those people it deems to be a threat to the state, the Judiciary can hardly be said to be independent.

Rather than fair and impartial, the sentencing of U Aung Thein, U Khin Maung Shein and Nyi Nyi Htwe,⁸ who are three of only a handful of lawyers working to provide an adequate defense for activists, was politically motivated. The last quarter of 2008 has seen a series of political activist and the lawyers who defend them jailed for political crimes and disrupting the judicial process.⁹ These incidents are just one more example of the SPDC military regime using the judiciary to intimidate their political opponents. It should also be noted that a charge under The Contempt of Courts Act is rare in the Burmese judicial system and such conduct that disrupts the judicial process is more often disciplined with verbal warnings or suspension of a lawyer's license – rarely are advocates sentenced to prison. Rather than abide by another principle outlined in the SPDC Judiciary Law No. 5/2000 which calls for the aim of justice to be ". . . reforming moral character in meting out punishment to offenders,"¹⁰ the prison sentences are acts of revenge and intimidation. Thus, the charges and convictions were rendered, not in an





independent light, but in the light of a regime attempting to quash all political dissidents and those willing to help them.

This injustice has also had the indirect consequence of interfering with the lawyer's right to practice and the defendant's right to representation. Against the 1880 Legal Practitioner Act, Section 811, which gives lawyers the right to take on any case and practice in any court in which they are licensed, this crackdown on the lawyers representing political activists has instilled a fear in lawyers that they too will be punished for fulfilling their duties as advocates. Having witnessed the fate of U Aung Thein, U Khin Maung Shein, Saw Kyaw Kyaw Min, Nyi Nyi Htwe and other lawyers who have spoken out to defend themselves, their clients, and the judicial process, many lawyers are afraid to appear in similarly high-stakes criminal cases. As a result, this case of injustice has had the tragic byproduct of limiting lawyers' right to practice and impeding the right to an adequate defense, guaranteed by the Code of Criminal Procedure, Section 340(1).

The Burma Lawyers' Council calls on other international organizations and interested parties to urge the restoration of justice and the international standards for an independent judiciary in Burma. U Aung Thein, U Khin Maung Shein, and Nyi Nyi Htwe must be released (and the charge against Saw Kyaw Kyaw Min retracted), their judgment repealed, and confidence restored in the ability of lawyers to practice their trade in a fair judicial system.

(Endnotes)

1 "Two More Defense Lawyers Prosecuted," *Mizzima News*, 3 November 2008, and "Nine Political Prisoners Dismiss Defense Lawyers," *DVB News*, 8 October 2008.

2 Burma Code Vol. 1, Section 138, *The Contempt of Courts Act* (India Act XII, 1926). (1 May 1926) Section 3: Save as otherwise expressly provided by any law for the time being in force a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand rupees, or with both: Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court: Provided further that notwithstanding anything elsewhere contained in any law the High Court shall not impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a Court subordinate to it.

3 "Describing the Two Lawyers Arguments," (Burmese version) *The New Era Journal*, 6 November 2008.

4 "U Gambira and Zarganar Dismiss their Defense Lawyers," *DVB News*, 21 October 2008.

5 "Beijing Statement of Principles of the Independence of the Judiciary," *6th Conference of the Chief Justices of Asia and the Pacific*, 19 August 1995, Section 10(c).

6 *Id.* Section 3(a).

7 SPDC Judiciary Law No. 5/2000, Chapter II, Section 2.

8 Saw Kyaw Kyaw Min fled and thus was not formally sentenced.

9 See "Lawyer and Activists Jailed for Six Months," *DVB News*, 31 October 2008.

10 SPDC Judiciary Law No. 5/2000, Chapter II, Section 2.

11 Burma Code Vol. XI, *Legal Practitioners' Act*, Section 8, pg. 429.

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