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## **Legal Statement on the Sentencing and Miscarriage of Ma Kay Thi Aung in Oh Bo Jail, Mandalay Division**

### **Case Brief**

Ma Kay Thi Aung was arrested on 14 September 2008 at 1:00 p.m. The police entered her house intending to arrest her husband, All Burma Federation of Students Unions leader Ko Htun Htun, who had fled beforehand. When they could not find him, the police arrested Ma Kay Thi Aung instead. At the time, she was two-months pregnant. The police have been using her as a hostage by conditioning her release on her husband's surrender.

On 27 November 2008, Ma Kay Thi Aung was sentenced to 26 years' imprisonment by the Special Court in Oh Bo Jail, Mandalay Division. She was convicted for allegedly contacting opposition activists outside Burma and allegedly leaving Burma illegally. Two 3-year sentences under Section 17(1) of the Unlawful Association Act, two 5-year sentences under Section 17(2) of the Unlawful Association Act and two 5-year sentences under Section 13(1) of the Immigration Act resulted in the 26 year sentence. Eleven other ABFSU students who had been arrested at the same time were also given long-term prison sentences.

During her interrogation sessions at the jail, military intelligence officials repeatedly beat Ma Kay Thi Aung. They prevented her from receiving food and medical treatment. As a result, on 29 December 2008, Ma Kay Thi Aung began to bleed heavily and her 6-month-old fetus died.

On 7 January 2009, Ma Kay Thi Aung's family traveled to the jail to see her. Authorities refused a visit. They were also continuing to deny her food and medicine.



Currently, Ma Kay Thi Aung is in Oh Bo Hospital. Authorities will not give information about her condition to her family. She is recovering from her miscarriage as well as the extreme distress and trauma resulting from the loss of her child.

## **Analysis of the Special Court's Judgment**

### **(a) *No Open Court***

Burmese national laws require that trials be held in courts open to the public. For instance, the Burma Judiciary Law 2000 (Law No. 5/2000) provides that “the administration of justice shall be based upon ... dispensing justice in open court unless otherwise prohibited by the law.”

Code of Criminal Procedure Section 352 adds that “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.” While the presiding judge has the discretion to keep the case closed, such exceptions are generally only proper for cases that involve national intelligence, state secrets or to protect vulnerable individuals, such as children or rape victims. None of these circumstances apply to Ma Kay Thi Aung's case.

Furthermore, there is no law authorizing a trial to be conducted or a court to be located on prison grounds.

Finally, Burma Supreme Court Justice U Aung Toe signed the 1995 Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, which underscores the necessity of public trials (Section 2).

Ma Kay Thi Aung was tried and sentenced in an unauthorized prison court hidden from public scrutiny. Burmese law expressly requires that cases like hers are open to the public. In a closed secret courtroom, there is no accountability or safeguards to ensure a fair trial. Ma Kay Thi Aung's trial clearly violated applicable Burmese laws and should be denounced by government authorities. Furthermore, Ma Kay Thi Aung was not given access to an attorney and was not permitted to defend herself at trial. She was given the maximum sentence possible without justification. It is the duty of the SPDC and Chief Justice U Aung Toe to ensure that an independent judiciary oversees all trials and applies relevant national and international laws and principles fairly. Based on the case of Ma Kay Thi Aung, they are clearly ignoring this responsibility.

### **(b) *Meeting Family in the Jail***

Prisoners have the right to meet family members while they are in prison. Burma Jail Manual (1894) Section 780 provides that the jail warden must permit prisoners to meet guests, family members and others at least once a month.



In Ma Kay Thi Aung's case, the authorities prevented all family visits for over one month. Requests from family members for visits were denied. This mistreatment clearly compounded Ma Kay Thi Aung's fragile health condition. It is a clear violation of the Jail Manual.

**(c) *Miscarriage in Jail***

The Burmese Jail Manual also grants prisoners the right to receive adequate medical attention. Section 40 provides that "prisoners have the right to receive medical treatment from the authorities" while Section 882 adds that medical officers must meet their patients at least once a day, and when the prisoners arrive to the prison, they must receive a medical exam. Ma Kay Thi Aung was not allowed to see medical officers and did not receive a check-up upon arrival. She was refused medical treatment throughout her imprisonment.

On the international level, the Standard Minimum Rules for the Treatment of Prisoners, adopted by the UN in 1955, provides that for women prisoners "there shall be special accommodation for all necessary pre-natal and post-natal care and treatment" (Section 23(1)). Ma Kay Thi Aung did not receive the pre-natal care she was entitled to.

In fact, her miscarriage was a result of SPDC violations of their own rules and regulations. First, the beatings by government authorities during the interrogation caused her baby grave injury and apparently led to its death. Second, the authorities' refusal to provide subsequent medical treatment, as is required by their own Jail Manual, clearly sealed the baby's fate.

A 6-month old fetus is a human being. Its life is protected under the "right to life" of Article 2 of the Universal Declaration of Human Rights. All human beings have an essential right to live, which in particular means the right not to be killed by another human being. The SPDC military intelligence officers and the jail authorities deprived Ma Kay Thi Aung's child of this right.

These officers and authorities should be held accountable for their acts. There are a host of domestic criminal laws that could be used to prosecute the offenders. For instance, Section 300A(e) of the Burma Penal Code provides that the "causing of the death of a child in a mother's womb" may amount to culpable homicide.<sup>1</sup> Additionally, Section 312 provides punishment of up to seven years' imprisonment and a fine for "whoever voluntarily causes a woman with child to miscarry." Assuming that authorities knew of Ma Kay Thi Aung's pregnancy, Section 315 could also be used to prosecute those who "prevent that child from being born alive".

Regardless of the applicability of criminal laws, those officials who contributed to the death of the fetus and the extreme suffering of Ma Kay Thi Aung must be held accountable and punished for their acts.



**(d) Length of Sentence**

The length of Ma Kay Thi Aung's prison sentence makes it obvious that her prosecution was an act of revenge for her and her husband's political activities. For allegedly leaving the country twice to contact pro-democracy activists, she was condemned to 26 years' imprisonment. If she serves her full term, she will leave at age 49. Her child, if it had not died, would be 26 years old at the time of her release. Criminal punishment should be used as a deterrent against others committing a crime and to reform the alleged convict. It must not be used as a political weapon of retribution.

**Demands of the Burma Lawyers' Council**

The BLC demands that:

- 1) The SPDC authorities release information on Ma Kay Thi Aung's health condition.
- 2) Ma Kay Thi Aung be allowed to meet with her family immediately.
- 3) The International Committee of the Red Cross be allowed to enter Oh Bo Jail to investigate Ma Kay Thi Aung's case and inspect jail conditions generally.
- 4) The military and health authorities involved in Ma Kay Thi Aung's case be held criminally and administratively accountable for their acts.
- 5) The SPDC disband all prison and jail courtrooms, and open all trials to the public.
- 6) Ma Kay Thi Aung be released immediately from prison as a result of her unfair trial conditions.
- 7) The SPDC implement safeguards to ensure that other prisoners are treated humanely and their rights under the Jail Manual are honored.

Burma Lawyers' Council  
27 January 2009

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**(Footnotes)**

1. For the act to be culpable homicide, the statute requires that some "part of that child has been brought forth, though the child may not have breathed or been completely born" Although it is not perfectly clear, the language "has been brought forth" seems to imply that at the time of death, the baby must be in some stage of partial birth.

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