



Part B: Rule of Law

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Statement on Unlawful Imprisonment of Lawyers Sentenced under 1926 Contempt of Courts Act

Experienced lawyers U Aung Thein and U Khin Maung Shein were sentenced to four months imprisonment, and junior lawyers U Nyi Nyi Htway and U Saw Kyaw Kyaw Min to six months imprisonment under the antiquated 1926 Contempt of Courts Act, Section 3 (India Act XII, 1926)¹ for fulfilling their duties as lawyers. Their convictions were clearly politically motivated to intimidate other lawyers from defending political activists and as revenge for the lawyers' dedication to seeking justice for their political activist clients.

The Contempt of Courts Act, Section 3 (India Act XII, 1926) has only been applied once in the past 22 years. During the case of *Daw Aye Kyi v. U Win Thaug, et al.*, Criminal General Applicant No. 122 (1986), a reporter wrote and published an article regarding the facts, allegations, and likely decision of the case. As this article was published before the judge had rendered a verdict, it influenced public opinion, and in the judge's opinion, disturbed the judicial process. Because the damage to public opinion could not be retracted, the judge charged the reporter under Section 3 of the Contempt of Courts Act and ordered him to pay a fine of 500 Kyats or serve one month in prison without hard labor.

The actions of U Aung Thein, U Khin Maung Shein, U Nyi Nyi Htway, and U Saw Kyaw Kyaw Min are very different from the actions of the reporter in the 1986 case. In the case of U Aung Thein and U Khin Maung Shein, their alleged disturbance was abiding by their clients' wishes to revoke their power of attorney. Similarly in the case of U Nyi Nyi Htway and U Saw Kyaw Kyaw Min, the judge convicted the lawyers of contempt of court for following their clients' instructions to put SPDC officials on their witness list. None of these acts



impeded the judicial process; rather, the lawyers were merely fulfilling their duty to vigorously defend and act on behalf of their clients.

Furthermore, even if the lawyers' actions could be interpreted as a disturbance of the judicial process, they were wrongly charged under the 1926 Contempt of Courts Act. The 1926 Contempt of Courts Act details that it shall only be applied, "*save as otherwise expressly provided by any law . . .*" In other words, if another law covers the situation, the Contempt of Courts Act is inapplicable. Here, there is another law that applies. It is the Court Manual, "Contempt of Court," Section 501, which covers cases in which a disturbance occurs in a courtroom under the judge's authority (in the 1986 reporter's case, the disturbance occurred outside the courtroom). This Section, referring to the Code of Criminal Procedure Section 480(1) (Procedure in certain cases of contempt), provides that the court can detain those persons refusing to cooperate with a judicial process or otherwise disrupting such a process during a criminal or civil case. If the judge finds the action warrants punishment, he can impose a fine not to exceed 2,000 Kyats before the end of that business day. If the accused person cannot pay the fine, he may opt to take the alternative sentence of one month without hard labor. Thus, the 1926 Contempt of Courts Act was incorrectly applied and the four-month and six-month sentences exceed the one-month limit provided for in the Court Manual.

Clearly, the lawyers were fulfilling their duty as court officials to act on behalf of their clients. However, in the puppet judicial system of the SPDC, defending political activists is punished as a crime. The inappropriately long prison sentences for U Aung Thein, U Khin Maung Shein, U Nyi Nyi Htway, and U Saw Kyaw Kyaw Min violate prescribed law and can only be seen as an attempt by the SPDC to harass defenders of political activists and to manipulate the law for their own ends.

The BLC demands the unconditional release of all imprisoned lawyers to prevent further injustice and avoid the complete desecration of the rule of law.

Burma Lawyers' Council
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(Endnotes)

1. 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.

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