Law Reporting in Burma: Lack of Transparency

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Introduction

Law reporting emerged from the doctrine of precedent, which requires that like cases should be decided in the same way. In most countries, leading cases decided by Supreme Courts are officially published in law reports, which contain the names of the persons appearing, pleas of the defendant, the judgment, and the reasons for judgment. Law reports should be reliable sources for those practicing in the legal field.

The distinction between authorized and other reports is important when it comes to citing a case in court. Although a case may be reported in a number of law reports, one should cite the authorized report as this has been revised by the judge. It often contains a summary of the arguments that the barristers put to the court. Both the judge and the barristers have to read from the same law reports. Cases are cited by stating the name of the case, the volume number or year number of report series (or both), the name of the report series and the page number where the case begins. Not every single judgment is included in law reports. The councils of law reporting and the editors of law publishing companies decide on which judgments are included. Generally the cases that are included in the report are landmark cases, those that are considered to be important for a point of law or those having an unusual set of facts.
In some countries there are private reports, weekly law reports and legal journals. These are often published by law publishing companies. In Burma however, this is not allowed. There are no privately owned newspapers, and the state newspapers controlled by the government never mention legal issues or political cases. Burma Law Report (BLR) is a government publication, published annually by the state-controlled Law Report Publishing Board. It is the only source for Burmese advocates. The report is based on judgments passed in significant cases by the Supreme Court. The selection of cases is at the discretion of government legal officials of course, and there is no transparency of judicial proceedings. Law reporting means accountability - the very thing that military juntas are afraid of. So it is not surprising that the reasoning leading to judgments in the BLR usually consists of a few sentences only, while the whole text contains repetition of selected facts. The duty to write down the judgment properly, in compliance with the rules laid down for this, is shirked and perfunctorily performed. The gross abuse of the principle guiding law reporting is patently visible. Burma Law Report reflects the way the junta is thinking in respect of law.

Judicial Principles and the Jurisdiction of the Supreme Court

People depend on the Court for justification in accordance with the laws. Even if the judges fully and independently exercise judicial power, the Court can be reliable for the people. Some provisions mentioned in the Judicial Law of the State Peace and Development Council or SPDC are reliable clauses with a standard not lesser than the international norms. For example, some of these clauses are:

**Judicial Principles**

- Article 2(a), administering justice independently in accordance with law;
- Article 2(e), administering the functioning of justice in open court unless prohibited by laws;
- Article 2(f), guaranteeing in all cases the right of defense and the right of appeal under the law.

**Jurisdiction of the Supreme Court**

- Article 5(d), adjudicating on appeal cases against any judgments,
orders and decisions passed by the State and Division Courts;

• Article 5(e), adjudicating on revision cases against any judgments, orders and decisions passed by any court;

• Article 5(g), examining any judgments, orders and decisions of any court which are not in conformity with the law, altering or setting aside such judgments, orders and decisions if necessary;

• Article 5(h), examining any orders and decisions which are not in conformity with the law, relating to the legal rights of citizens and altering or setting aside such orders and decisions if necessary.

Miscellaneous

• Article 25 says that the Chief Justice, Deputy Chief Justice, the Judges of the Supreme Court and the Judges of State, Divisional and District Courts may, if necessary, inspect prisons, ylht (labour) camps and police cells in order to enable those under detention to enjoy the rights to which they are entitled in accordance with the law, and in order to prevent undue delay in trials.

These are provisions that comply with the international norms. However, the judges in Burma have to obey the orders of the military junta also. At a meeting the First Secretary of the junta, Lt-Gen Khin Nyunt, said that, “... the Judges need to consider state policies, planning and administration in their judgments, other than merely considering judiciary perspectives”. U Aung Toe, Chief Justice of the Supreme Court, while delivering a speech during the same meeting, used the words “under the First Secretary’s guidance” many times. He reminded the judges to follow that guidance. Under such guidance it is difficult to believe that judges are independent and that their judgments are fair and just. The selection of cases for Burma Law Report is, of course, in accordance with Khin Nyunt’s guidance also.

Cases Mentioned in Burma Law Report

Burma Law Report consists of two parts: criminal and civil cases. This paper is focusing on the criminal part. In the criminal cases part of BLR, there were 51 cases mentioned in 1992, 50 cases in 1993, 24 cases in 1994, 39 cases in 1996, 16 cases in 1997 and 37 cases in 1998. In the reports over the years 1992 and 1998, cases were included with punishments ranging from six months imprisonment up to capital punishment.

The judgments as mentioned in BLR are mostly related to the Criminal Code,
such as theft, swindle, embezzlement, rape, murder, and receiving stolen property. Some other cases are related to laws such as the Criminal Procedure Code, the Burma Evidence Act, the Tenant Act of 1962, the Narcotics and Dangerous Drugs Act of 1974, and the Narcotic Drug and Psychotropic Substance Law of 1993.

Mostly minor cases were mentioned in BLR between 1992 and 1998, such as theft cases. One theft case as described in BLR of 1994, for example, tells about the secretary of the board of trustees of a temple in Pegu, who had accused a carpenter of stealing an estimated 1500 kyat (equivalent to 4 US dollars at the unofficial rate) worth of timber from the temple, whereupon the carpenter countered that he had taken the timber with the village headman’s consent, to make chairs for the temple. The decisions of both Primary and Lower Appeal Courts on this case were eventually submitted to the Supreme Court.\(^\text{10}\)

Another case mentioned in BLR was about the act of stealing a toddy palm worth 1200 kyat from a farm. Both parties in the case had previously owned the farm as co-heirs. Later on, the farmland had been divided before the village headman and other witnesses, but the ownership had not been legally recognized. The plaintiff (seeing himself as the only true owner of the farm) maintained that the accused should have asked his permission to take the toddy palm away. The accused countered that, as co-owner of the farm, he did not need anyone’s permission to do so. Eventually an appeal was submitted to the Supreme Court.\(^\text{11}\)

By looking at Supreme Court judgments in this kind of cases, one would assume that citizens in Burma can enjoy their rights of submission, appeal, review and revision, and that the judges perform their duties in accordance with the law. But while trivial cases are mentioned in *Burma Law Report*, no cases whatsoever are mentioned regarding the actions taken against members of political parties.

There have been hundreds, if not thousands of political cases in Burma, such as cases under the Emergency Provisions Act of 1950, the State Protection Act of 1975, and the Printers and Publishers Registration Law of 1962. Judgments in cases under these laws – very often with an unjust, unfair, ambiguous and politicized nature – remain unreported in BLR.

### Unreported Landmark Cases

Landmark cases that were not mentioned in *Burma Law Report* include the following traffic accident cases. While U Saw Hlaing (an official of the National League for Democracy) was driving his car, he collided with a trishaw\(^\text{12}\) in
Taunggoo District. Although the collision only resulted in minor injuries to the trishaw driver and his two passengers, U Saw Hlaing was taken to Kyunggone Police Station and charged under Article 338 of the Penal Code, “for causing grievous injury”. He was sentenced to five years. However, the case had not been taken to any court of law and defence counsels were denied, totally against the Criminal Procedure Code.

Strangely enough, more serious traffic accidents may carry less severe penalties. Maung Htut Kyaw Win (the son of a military officer) caused an accident with his car, resulting in Maung Ye Win (a student at the Institute of Economics) getting severe injuries. Maung Ye Win was admitted to hospital where he died. Maung Htut Kyaw Win was arrested, detained for a couple of weeks, and then suddenly released. Of course the judgment cannot be found in BLR. But it is obvious that, after Maung Htut Kyaw Win had been driving a car, his father must have been driving a coach and horses – through the law.

While twenty-eight political prisoners, including U Win Tin (the Secretary of the National League for Democracy and Vice-Chairman of the Writers’ Association), were serving long-term imprisonments under Section 5(j) of the Emergency Provisions Act, they were again charged, this time for contravening prison regulations. Such regulations are laid down in the Jail Manual, but as this describes relatively light punishments, they were charged under Section 5(e) of the Emergency Provisions Act which carries more severe penalties. The case was tried in prison without defendant lawyers, whereupon the existing prison sentences were extended with another 7 years. According to the procedures as stated in the Evidence Act and the Court Manual, the judgment of the court is a public document and people concerned in the case should have the right to access that judgment. The junta’s obstruction, however, has made it extremely difficult for citizens to get any concrete information about cases tried in prison.

Ko Khin Htun, who was visiting his jailed friend, was also charged for contravening prison regulations. Although Burmese prison regulations refer only to prisoners and not to their visitors, Ko Khin Htun was accused of violating Article 5(d) of the Emergency Provisions Act of 1950 and Article 42 of the Jail Manual of 1894 (amended in 1937). Although the prosecutor was unable to produce any evidence, the prison officials who were supposed to be eyewitnesses were never summoned to testify. Although until the last session of the trial any legal aid was denied, the court sentenced Ko Khin Htun to a combined penalty of 4 years and 3 months imprisonment. This was totally against Section 340 (1) of the Criminal Procedure Code, Article 455(1) of the Court Manual and Article 2(f) of the Judiciary Law. Besides, this trial totally ignored an earlier ruling of the High Court (even mentioned in BLR!) which said, “... the court cannot rule to be affected upon an offence without giving permission to defend the accused (…).”
Sometimes a case is based on mere suggestions, for example the case of Dr Min Soe Lin (a member of parliament since the May 1999 elections, and Secretary of the Mon National League for Democracy). Two members from the Central Committee of the New Mon State Party (NMSP, which entered into a cease-fire agreement with the military regime) had requested Dr Min Soe Lin to give the NMSP some suggestions. A letter with suggestions was written, whereupon the military junta accused the three persons of agitating against the cease-fire agreement. Under Article 5(e) of the Emergency Provisions Act, the accused were sentenced to 7 years in 1995. It would be interesting, necessary even, to know the reasons for deciding such (political) cases, however none of these have been mentioned in *Burma Law Report*.

The Law Report Publishing Board

The Law Report Publishing Board consists of members appointed by the military government. Following are the members of the Board since 1988: Chairman U Tin Ohon (Supreme Court Judge), U Ba Than (Chief Director of the Supreme Court), U Tin Aye (Director of the Criminal Cases Department of the Supreme Court), and U Soe Nyunt (Director of the Civil Cases Department of the Supreme Court). U Thet Htun (Director of the Administration Department of the Supreme Court) was the Secretary of the Board. In 1994, four members were added to the Board: U Than O and Dr Tin Aung Aye (both Supreme Court Judges) became the Chairman and Vice-Chairman respectively, U Thin Zaw became the Joint Secretary, and U Chan Htun became Member.

Current members of the Board are from the Supreme Court but they are not practicing advocates. During the period of parliamentary democracy before 1962, members of the Board (including the Editor) were mostly practicing lawyers, while at least one of the members came from the Office of the Attorney-General.

Conclusion

*Burma Law Report* has not included any political cases since 1988, which is not surprising because it is a government publication. The BLR has not been a reliable source since 1962, when the military seized power. The current BLR is a result of the destruction of Rule of Law in Burma. It has become a façade, which ironically very clearly reflects the attitude of the military regime towards law. BLR should stand for *Bad Law Report*. 
Endnotes

* The author is an Executive Committee Member of Burma Lawyers’ Council.

3. Speech by First Secretary of the State Law and Order Restoration Council, at the Coordinating Meeting of Supreme Court Judges, State and Division Judges, District Judges and Law Enforcement Officers, on 22 August 1994.
5. See: Burma Law Report, 1993
12. A trishaw (or saika) is a small three-wheeler bicycle taxi with one seat next to the driver and another seat behind that. The two passengers are sitting back to back – highly uncomfortable.
15. “… If a person aims to disseminate false information and has committed such an act or is in the process of doing so, knowing that the news is not correct or that there is enough proof that the news is not correct, [this person] shall be punished with up to seven years imprisonment, or a fine, or both” (The Burma Code, Vol. II, p. 244).
17. “… Whoever conducts an act with the intention to frighten the general public or a group of people, or conducts an act with this result (…)” (The Burma Code, Vol. II, p. 246).
19. “Any person accused of an offence before a criminal court, or against whom proceedings are instituted under this [Criminal Procedure] Code in any such court, has the right to be defended by a pleader” (The Burma Code, Vol. VIII, p. 264).
20. “Every person charged with an offence shall have the right to be defended by a pleader” (The [Burma] Court Manual, p. 266).


24. According to Mr. B.K. Sen, Advocate and current Executive Committee Member of Burma Lawyers’ Council, who has more than 40 years of experience in the legal field. He has been a member of the Burma Bar Council and was Joint Secretary of the Burma High Court Bar Library.