



General Assembly

Distr.
GENERAL

A/HRC/10/NGO/37
25 February 2009

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Tenth session
Agenda item 4

HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organisation with general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 February 2009]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Myanmar: Targeting of defence lawyers in Myanmar

1. In 2008 the authorities in Myanmar increasingly targeted defence lawyers as a means of quelling dissent not only outside but also inside the criminal justice system itself. Although the law practiced in Myanmar is supposed to be adversarial, apparently not content with already pre-arranging for the outcomes of many cases through the orders of executive councils at all levels to trial judges, authorities also began taking action against defence lawyers who have been causing them embarrassment simply because they have been trying to do their jobs according to law.

2. Towards the end of the year, at least six lawyers in Myanmar were accused of criminal offences because of their attempts to defend clients whom the Government of Myanmar intended to imprison irrespective of the trial process. Out of those six, the Asian Legal Resource Centre has closely documented the case of Supreme Court advocates U Aung Thein and U Khin Maung Shein, who were imprisoned for four months on a charge of contempt of court in November 2008. A brief study of the mechanics of the case and the means by which the two were imprisoned speaks to the extent to which the courts in Myanmar are governed by what the former Special Rapporteur on the situation of human rights in Myanmar correctly characterized as the “un-rule of law”:

a. U Aung Thein and U Khin Maung Shein are both lawyers of over 20 years experience in Myanmar. They have represented many defendants in criminal cases arising from the protests of September 2007. Among them were five cases lodged against three young men, Ko Htun Htun Oo, Ko Maung Maung Latt and Ko Aung Kyaw Moe, and one young woman, Ma Htar Htar Thet, Felony Nos. 307-311/2008 before Judge Daw Aye Myaing of the Hlaing Township Court in Rangoon (Yangon). The hearings were proceeding, like others from September 2007, in a special courtroom within the Insein Central Prison, under an order from the Supreme Court.

b. At the hearing of 3 October 2008 the family members of the defendants were not allowed to enter the courtroom nor leave food for them. Thereafter, at the hearing on October 6, Ko Htun Htun Oo, speaking on behalf of the four defendants, informed the court that as the family members had been denied the right to attend the hearings and as the defendants “no longer had faith in the judicial process” they had decided that they would no longer cooperate with the court. They would refuse to be examined, give testimony, or cross-examine witnesses through their counsel. They also would withdraw the power of attorney from the two lawyers at the next hearing. After he made this statement, the judge instructed that the same be put to the court through the lawyers. U Aung Thein asked that the court record the same in its record and U Khin Maung Shein did likewise. It was clear from this procedure that the withdrawal of power of attorney was made through consultation of the clients with their advocates, in accordance with the clients’ wishes. Thereafter the two attorneys left the courtroom.

c. At the hearing of October 13 U Khin Maung Shein appeared to inform the court that the submissions to withdraw power of attorney had not yet been prepared. Thereafter he left the court.

d. On October 20 U Khin Maung Shein in the courtroom gave the submissions to withdraw power of attorney in the five cases to the four defendants. They read the documents thoroughly and each signed them. The two attorneys also had their signatures affixed. Then the documents

were submitted to the court. At that time the judge said that the remark in paragraph 2 of the submissions to withdraw power of attorney that the defendants “no longer had faith in the judicial process” had not been made orally at the earlier hearing. Two of the defendants, Ko Htun Htun Oo and Ko Aung Kyaw Moe, both objected that they had said these words and they would again make a submission to the court to this effect. But Judge Daw Aye Myaing said that, “It is too late. Don’t speak.”

e. The Hlaing Township Court then made an application to the Supreme Court under section 3 of the Contempt of Courts Act, 1926, that, contempt of court may be punished with imprisonment for a term that may extend to six months, in Miscellaneous Criminal Application No. 99/2008, Daw Naw Than Than Aye applicant. This Act consists only of this provision for the term of punishment. It contains no criteria on what amounts to contempt of court. In the past, courts in Myanmar (then Burma) had set some parameters and there was in general respect for the role of the attorneys and the need to ensure that they could conduct their business without fear of intimidation or retribution; however, as the present case reveals this provision exists in Myanmar today merely as one among many sticks that the authorities have available with which to hit out at anyone whom they deem to be threatening their personal prestige or the position of the state.

f. On 6 November 2008 the Supreme Court found the two advocates guilty of contempt of court and sentenced them to four months’ imprisonment each. In a letter of appeal against the sentence, U Khin Maung Shein noted that in Judge Daw Aye Myaing’s report of the proceedings of October 6, “After examination [of a prosecution witness] the defendants did not present any cross-examination,” which supports the lawyers’ assertion that it was the clients’ loss of faith in the judicial process as stated in the letter that caused this behaviour, not the lawyers’ own ideas. Furthermore, he observed that the clients would not have signed the documents to withdraw power of attorney with the said words if they had not really said them. This fact was even noted by the Supreme Court, which recorded that, “Although Daw Aye Myaing said that the defendants did not know anything about this matter as their signatures are on the submissions this issue needs to be examined for clarification.”

g. The wives of defendants Ko Htun Htun Oo and Ko Aung Kyaw Moe, Daw Khin Ma Win and Daw Win Maw Aye have also verified that when they each visited their husbands in prison the defendants said that because the families had not been allowed into the courtroom and because they no longer had faith in the judicial process they would withdraw power of attorney from the two lawyers. The two wives wanted to submit affidavits to the court to this effect but had been denied the opportunity.

h. Like defendants from last September 2007, the prison authorities have transferred the two lawyers to prisons remote from their families, in the Ayeyarwaddy Division. U Aung Thein was sent to Patheingyi Prison; U Khin Maung Shein to the Myaungmya Prison, further to the west. They were due for release on 7 March 2009.

3. Aside from criminal sanctions, there are many other methods that the authorities in Myanmar use to intimidate and coerce lawyers in Myanmar today in order that they refrain from performing their jobs to the best of their ability and the extent of the law. The ALRC has obtained a list of over 200 lawyers who in recent years have been suspended or deregistered and are now unable to practice, many of them as a result of doing things that the authorities found

inimical to their interests. In a country with lawyers numbering in the thousands, this is a large percentage that speaks to the attempts to contain and coerce the profession as a whole. The ALRC has followed a number of cases of deregistration closely and is aware that the lawyers who have suffered this penalty have been informed by written communication of what has happened to them and have been denied the opportunity to present a defence, although the law allows for this.

4. In light of the above case and many others of its sort in Myanmar, some known to human rights groups abroad, many others not, the Asian Legal Resource Centre makes a special call to the Human Rights Council for close attention to be made to the situation of defence lawyers in Myanmar through the relevant Special Procedures, especially those on the situation of human rights in Myanmar, the independence of judges and lawyers, and human rights defenders. In a legal system where not only the defendants are wrongly accused and tried in violation of basic criminal law and procedure but also their attorneys are targeted for retribution, the notion of protection of even the most basic human rights becomes an absurdity. If the lawyers, let alone their clients, are not free from wanton persecution of the sort described in this case then there is no prospect even for the formal application of law, let alone the realization of any of the guarantees that it should otherwise offer. It is critical for the sake of the absolute minimum defences of human rights in Myanmar that lawyers are able to do their jobs and it is essential that the Council place the situation and rights of advocates there at the top of its list of concerns and priorities.
