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Rule of Law in Burma under SLORC

Rule of Law is amongst the foremost political objectives proclaimed by the State Law and Order Restoration Council (henceforth referred to as SLORC). However, in matters concerning members, supporters and sympathizers of the National League for Democracy (NLD), the authorities habitually take arbitrary action which does not accord with the law of the land.

In section 2(a) of SLORC's law no. 2/88, "the Judiciary Law", it is said that "justice will be administered independently according to law". However in cases concerning members of the NLD, judgment is passed as required by the authorities and dictated by various state intelligence organs, regardless of the provisions of the law.

Although section 2(e) of the above mentioned law provides that "Justice shall be dispensed in open court unless otherwise prohibited by law," trials are held in prison precincts. Without the permission of the intelligence organs, judges cannot even let the family and counsel of the accused know what sentence has been passed. In many cases the accused are kept in ignorance of the section of the law under which they are charged. There have been instances when the Military Intelligence passed sentences orally at the time of arrest, before any trial had taken place.

Section 2(f) of SLORC law no. 2/88 gives the accused the right of defence and the right of appeal under the law. Moreover, section 340(1) of The Code of Criminal Procedure (act V of 1898) provides that "any person accused of an offense before a Criminal Court, or against whom proceedings are instituted under this code, in any such court, may of right be defended by a pleader" (i.e. by a lawyer). This was reiterated in para. 455(1) of the Burma (now Myanmar) Courts manual, as follows: "Every person accused may of right be defended by a pleader". In the majority of cases where the accused are members of the NLD, access to and defense by a

lawyer are denied in flagrant violation of SLORC's own laws and proclamations.

Maximum prison sentences are meted out to members of the NLD even when the evidence against them is inadequate or even impermissible under the law.

In cases of appeal or revision to a higher court, the convicted person is required to put his or her signature to a form giving power of attorney to a lawyer to file the memorandum of Appeal or Revision within the prescribed period of time. However, when the relevant forms are submitted to the prison authorities, the forms are filled in and returned only with the consent of the Military Intelligence.

In cases prosecuted under section 5 (j) of the notorious Emergency Act of 1950, the accused are detained for long periods under the pretext of awaiting the sanction of the authorities concerned. When sanction is not received, instead of closing the case, the accused are sent up to be prosecuted under section 505 (b) (statements conducive to public mischief) and sentenced to imprisonment.

Fundamental Legal Rights Denied

Bail is often denied to cases which are bailable under section 496 of the Criminal Procedure Code by classifying such cases as "Si-Man-Chet," or "Planned." In such cases the accused may not have infringed the law but the judges are obliged to give them compulsory sentences, usually a term in jail. In such cases the higher appellate courts usually take the line of least resistance and do not rectify or interfere with the orders and sentences of the lower courts. The appeal or revision is dismissed. Consequently the Pillar of Justice is no longer a pillar of strength and refuge for the oppressed but is like a reed quivering in the wind.

Sub-Judice Speeches

In special cases, the Judge personally convenes a meeting of his subordinates and explains in a speech the reason why a certain person or persons are deemed or to be deemed guilty of the offense with which he/she or they are charged. When such a meeting is convened by the highest judicial authority and the explanation is also delivered by him, it is more than a sub-judice act; it virtually amounts to a conviction before and without a trial.

Retrospective Laws

On 10 July 1991, the SLORC promulgated law no. 10/91, amending the Hluttaw Election Law. On the same day, SLORC issued order no. 4/91 which enumerated

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offenses affecting elected representatives. Both the law and the order were to have retrospective effect, thus violating fundamental and sacred principles of law.

The Judiciary Under Military Dictatorship

The military government of Burma has not abided by its own municipal laws nor by international norms of justice. As it is neither an elected government accountable to the people nor a popular government ruling under a constitution accepted by the people but a government that has usurped power by military force, there can be no rule of law and the independence of the judiciary is a mere scrap of paper, a mockery of the system.

Arbitrarily arresting members, supporters and sympathizers of the NLD who are simply working for democracy out of true belief and convicting them under laws meant for common criminals contradicts internationally accepted principles and norms of justice.

Members, supporters and sympathizers of the NLD who are jailed are frequently transferred to prisons far away from their homes. As a consequence, some imprisoned NLD members are unable to see their families for months and thus deprived of important moral support as well as the essential supplement to their diet and the medicines necessary for survival in the penal system under SLORC.

Some prisoners of conscience who have completed their jail terms are not released.

Pyithu Hluttaw or Parliament

The Pyithu Hluttaw (Parliament) Election Law defines the word Hluttaw as the Pyithu Hluttaw and section 3 decrees that the Hluttaw shall be formed with the elected representatives of the various constituencies in accordance with the law. However, the Hluttaw has not yet been called or convened although elections were held way back in 1990. This is in stark contrast to the procedure in working democracies where Parliament is convened within weeks of the elections. The failure to call the Hluttaw is tantamount to a refusal to respect the mandate of the people.

Suppression of the Right Activities of Political Parties and Persecution of Members of the LND

Under section 2(b) of the SLORC law no. 6/88, the law relating to the formation of

political parties, a political party is defined as a party which has a political belief upon which its activities are based. Yet members of the NLD are not allowed to engage in legitimate political activities.

Such occasions as the commemoration of the anniversary of the founding of the NLD and the anniversary of the resounding victory won by the NLD in the elections of 1990, are normal functions for a legally registered party. However, the authorities habitually subject the NLD to severe harassment on these occasions. Delegates to the commemorative conventions are detained, those who have to come from the districts are denied bus and train tickets, wives of delegates who manage to get away for the conventions are detained, access to the venue of the conventions is blocked, delegates arriving for the conventions are forcibly turned away or taken away by car to a distant suburb. NLD delegates who are detained are charged under various sections of the law such as section 5(j) of the infamous 1950 Emergency Provision Act (the Law Protecting the State from Destructive Elements); section 505(b) of the Penal Code, designed against statements conducive to public mischief; and section 5(1)(f)(g) of the Habitual Offenders Restriction Act, better known as HORA, which is intended for habitual criminals and thieves, vagabonds, and those who do not have an ostensible means of livelihood.

In some police stations detained members of the NLD were kept like common criminals and in some instances were subjected to inhuman treatment. Women members of the NLD were put in the same cells as prostitutes and criminals, on occasion even kept together with male detainees.

The authorities subjected elected Hluttaw representatives of the NLD who were detained to threats and intimidation, and used various unlawful means to compel them to resign as the elected representatives of their Hluttaw constituencies.

The authorities constantly interfere in the internal matters of the NLD and restrict its activities such as the formation of organizational committees, the delegation or suspension of duties and responsibilities. Recruitment of new members is prohibited, party meetings are prevented or restricted.

The opening of NLD offices and the putting up of NLD signboards are not allowed. Signboards that were legally put up with the permission of the Elections Commission have been forcibly removed by the authorities. The lawful flag of the NLD was not allowed to be flown at various NLD offices and forcibly removed. Owners of the premises where NLD offices are located are threatened and coerced to withdraw their leases.

The NLD is not allowed to print, publish or distribute any papers. Documents that were seized during raids on NLD offices are not returned. Legally published directives and documents laying out the policies of the NLD are seized as exhibits and those in possession of such papers are prosecuted. The distribution of video recordings of conventions and commemorative ceremonies held by the NLD are prohibited. A law was promulgated in 1996 to make the distribution of such videos an offense carrying a stiff prison sentence.

The wearing of the (unofficial) uniform of the NLD by an organizational committee in the Irrawaddy division was deemed to constitute incitement to unrest and disturbance of the peace and tranquility of the country. All the members of the committee were prosecuted and sentenced to imprisonment. The chairman of the committee has since died in Myaungmya prison from lack of adequate medical care.

The authorities place difficulties in the way of business and social activities of members of the NLD. Matters relating to tax and revenue, transport and communications are subjected to close scrutiny and the slightest mistake results in prosecution and prison sentences.

Members of the NLD are unjustly evicted from state owned apartments. In some instances, house owners are prevented from taking in members of the NLD as tenants. There have also been cases where guest houses were ordered not to rent rooms to members of the NLD.

Civil servants related to members of the NLD have been arbitrarily transferred to remote areas. NLD members who are medical practitioners have had their licenses to practice medicine withdrawn. NLD lawyers have also had their licenses suspended and some have been struck off the roll of lawyers.

Instigation or Perpetration of Violence against Members of the NLD

On 9 November 1996, a convoy of cars carrying U Tin U, U Kyi Maung, Daw Aung San Suu Kyi and some elected representatives was attacked by about 200 people with miscellaneous weapons in broad daylight.

A first information report was lodged with the Bahan Township Police Station but in spite of the fact that some security officers were present around the scene at the time of the attack, not a single person has been known to have been arrested in connection with the incident. Eleven months have now passed but the police have not yet sent up any persons for trial.

The NLD with a view to bringing out the truth and preventing any similar incidents from taking place in future, proposed to the authorities that an independent enquiry panel comprised of respectable and trustworthy citizens be formed and that their findings be published for the benefit of the general public but the authorities have not made any response.

A Minister of the SLORC government who is also a secretary of the Union Solidarity and Development Association (USDA), openly called for the “elimination” of Daw Aung San Suu Kyi. He specifically explained that to eliminate meant to kill. The government has turned a blind eye to such a gross offense under the criminal law in spite of an official request by the NLD to the chairman of the SLORC asking that appropriate action be taken. (It is worth noting here that the USDA was formed under a notification that enables members of the civil services to join the association. Thus, a notification has been allowed to override a law, no.6/88 promulgated by SLORC, which prohibits all public servants, including military personnel, government servants, the police and all those receiving salaries from public coffers, from joining associations.)

The chairman of the Mandalay Division organization committee of the NLD who is also an elected Pyithu Hluttaw representative was attacked and robbed on the Mandalay-Rangoon Express on 22 November 1996. Although the incident was duly reported to the police; no action was taken.

Local authorities have made threats against the life and security of members of the NLD living under their jurisdiction. Members of the NLD have been conscripted as porters for the armed forces and four members to date have lost their lives as a consequence.

Forced Labour

Forced labour is a daily occurrence in all parts of Burma. Action is taken under section 12 of the Village Act against those who refuse to supply “Voluntary” labour to build roads, railways, bridges, dams and other constructions when ordered to do so by the authorities.

Sometimes rigorous terms of imprisonment are meted out. It is often difficult for households to supply the labour required of them without economic loss. During the hot season and during the rains, the health of labourers suffer from the weather and from lack of clean drinking water. In many instances neither adequate food nor shelter is provided. Lives have been lost due to ill health and to snake bites in some areas.

Labourers are treated harshly and often made to provide food and shelter at their own expense. At the completion of the work quota, labourers sometimes have to bribe the authorities so that they would be released to return home. The ILO should take steps to ensure that such a misuse of labour contrary to the spirit and letter of the ILO conventions is discontinued as soon as possible.

General

There is no freedom of thought, expression or association in Burma under SLORC. The laws and notifications brought out by SLORC are sometimes contradictory, as has been illustrated in some of the cases above. Law no. 5/96 represents another contradiction. After declaring openly that it was the duty of all citizens to participate in the drawing up of the state constitution, the law prohibits the drawing up of a constitution by anybody outside the National Convention convened by SLORC.