



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/NGO/41
11 February 2005

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 11 (d) of the provisional agenda

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE,
IMPUNITY**

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organisation in 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.

[26 January 2005]

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

IMPUNITY AND THE UN-RULE OF LAW IN MYANMAR

1. It is of great concern to the Asian Legal Resource Centre (ALRC) that two years after the Special Rapporteur on Myanmar declared there to exist only the 'un-rule' of law in Myanmar, government officials continue to enjoy a degree of impunity that makes it impossible for ordinary citizens to obtain any justice. Not only does the absence of any rule of law within the country allow local authorities and state agents to violate the rights of citizens, but citizens are further victimised if they attempt to seek redress for these violations.

2. The experience of U Ohn Myint and Ko Khin Zaw, both of whom were charged with criminal defamation for complaining of forced labour is indicative. Although the Government of Myanmar outlawed the use of forced labour in 1999, reports of the practice continue to be widespread, and attempts to lodge complaints in accordance with existing legal provisions have proved futile. When Ko Khin Zaw and U Ohn Myint filed a complaint in the Henzada Township Court, Ayeyawaddy Division in July 2004 after being jailed for failing to do sentry duty at a village monastery, their complaint was summarily thrown out of the court. However, the same judge then entertained a complaint of criminal defamation by the vengeful local administrative officials. The two villagers were found guilty, and were offered a fine or six-months' imprisonment. In an act of defiance, the two men chose jail.

3. Not only is the criminal defamation law used in this case problematic – in recent years criminal defamation has been condemned globally as offensive to basic rights and many countries have removed it from the statute books – but the case demonstrates the punitive actions taken against citizens in Myanmar attempting to exercise their rights. The fact that U Ohn Myint and Ko Khin Zaw were recently freed after the fines imposed on them were reported to have been paid by military intelligence officers further highlights the absence of any rule of law in the country. U Ohn Myint and Ko Khin Zaw's complaints of forced labour are typical of the situation throughout the country, particularly in remote areas. The only difference is complaints from far-flung regions are little publicised, let alone heard in the courts.

4. In another instance, on 18 April 2004 Police Corporal Aung Naing Soe came to Thida Street, in Thida Ward, Kyinmyindaing Township, and began to clear away homeless people present in the vicinity, including one Ma San San Htay, a betel nut seller, who quarrelled with him. He then hit her in the mouth, grabbed hold of her hair and before many witnesses dragged her along the road while she cried out for help. When 26-year-old Kyaw Min Htun intervened, the police officer hit him, whereupon Kyaw Min Htun hit back, breaking the officer's nose. Kyaw Min Htun was then taken and charged under section 333 of the Penal Code with inflicting violence on a public servant while in performance of his duties. On 24 June 2004, the Kyinmyindaing Township Court found Kyaw Min Htun guilty, and sentenced him to two-years' imprisonment with hard labour.

5. This case demonstrates how local authorities operate to guarantee impunity for government officers under any circumstances in Burma. In reaching its verdict, the court did not assess the relative merits of the arguments on both sides, or even ask if there was any validity to the claims of assault against the police officer. While the court sentenced Kyaw Min Htun, it did not question whether hitting and dragging a woman along by her hair would be appropriate behaviour for an officer 'in the course of his duties'. It merely established that the accused hit the

officer and sentenced him accordingly. This underlines the nexus that exists between local police officers, government officials, and the judiciary throughout Burma that denies the possibility of natural justice for any person challenging one or another of these authorities.

6. This nexus is particularly visible in the sentencing of Ma San San Aye, aged 16, and Ma Aye Mi San, both from Pyapon Township, Ayeyawaddy Division in October 2003 to four years imprisonment, for lodging a police complaint against U San Net Kyaw, a local official who raped them. The case is particularly disturbing because the guilty official was even charged with rape after a local tribunal conducted an investigation, but was not arrested by the district police, who instead referred the matter to the township law office. Upon instruction from the Pyapon District Law Office, the charges against him were dropped, but ironically the victims were charged and sentenced to four years hard labour for falsely accusing a government officer on 20 October 2003. Their current whereabouts are unknown.

7. In recent years, there have been credible reports of soldiers, often under the instruction of superior officers, systematically raping women belonging to minority groups located in remote parts of the country. The case of Ma San San Aye and Ma Aye Mi San shows that even in central areas not far from the capital, persons in positions of authority are capable of raping with impunity, and that victims are likely to be punished by the courts if they dare to challenge the legality of a state official's actions, irrespective of circumstances.

8. It is thus of particular concern that not only do U Ohn Myint, Ko Khin Zaw, Kyaw Min Htun, Ma San San Aye, Ma Aye Mi San and countless other victims of human rights violations have no channel for effective redress, but they have to suffer further from the punitive action taken against them for attempting to exercise their rights. Moreover, the message delivered to the Myanmar public is that asserting their rights is both dangerous and meaningless.

9. This type of punitive action is taken against all those who do not acquiesce to state action: in November 2004 several high-level officials from the judiciary and legal system, including Supreme Court judges, were removed from office for refusing to give legal advice to convict ex-Prime Minister Khin Nyunt on corruption charges.

10. In light of the above, the Asian Legal Resource Centre urges the Commission and in particular the Special Rapporteur on Myanmar to take the necessary steps in order that the Government of Myanmar

a. Investigate immediately the above-mentioned cases and ensure that the law is correctly enforced, offenders prosecuted and punished accordingly, and the victims compensated without regard to their relative social status or official position.

b. Fulfil its international obligations by introducing and implementing the domestic legislation necessary for protecting the rights of its people.

c. Establish an independent body to investigate complaints concerning state officials, which should have executable authority.

- d. Cooperate effectively with agencies such as the International Labour Organisation to prevent forced labour, rather than attempting to disguise the issue.
