article 2
of the International Covenant on Civil and Political Rights
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special edition

Saffron Revolution

IMPRISONED,

law demented

any person whose rights or freedoms are violated shall have an effective remedy, determined by competent judicial, administrative or legislative authorities

The meaning of article 2: Implementation of human rights

All over the world extensive programmes are now taking place to educate people on human rights. As a result today there exists a vast number of persons and organisations firmly committed to human rights; more than at any other time in the history of humankind. Yet human rights continue to be monstrously violated.

It is time for the global human rights movement to examine why it may not yet be achieving real improvement in the global human rights situation. One factor hindering honest examination is the belief that improvement of knowledge about human rights will by itself end human rights violations. This is a myth based on the corresponding belief that education is itself capable of improving things.

In reality human rights can only be implemented through a system of justice. If this system is fundamentally flawed, no amount of knowledge—no amount of repetition of human rights concepts—will by itself correct its defects. Rather, these need to be studied and corrected by practical actions. Hence research and intimate knowledge of local issues must become an integral part of human rights education and related work.

article 2 aims to do this by drawing attention to article 2 of the International Covenant on Civil and Political Rights, and make it a key concern of all partners in the global human rights community. This integral article deals with provision of adequate remedies for human rights violations by legislative, administrative and judicial means. It reads in part:

> 3. Each State Party to the present Covenant undertakes:
>
> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> (c) To ensure that the competent authorities shall enforce such remedies when granted.

Sadly, article 2 is much neglected. One reason for this is that in the 'developed world' the existence of basically functioning judicial systems is taken for granted. Persons from those countries may be unable to grasp what it means to live in a society where 'institutions of justice' are in fact instruments to deny justice. And as these persons guide the global human rights movement, vital problems do not receive necessary attention. For people in many countries, international human rights discourse then loses relevance.

Other difficulties also arise with article 2. One is the fear to meddle in the 'internal affairs' of sovereign countries. Governments are creating more and more many obstacles for those trying to go deep down to learn about the roots of problems. Thus, inadequate knowledge of actual situations may follow. A further and quite recent disturbance is the portrayal of national human rights institutions and their equivalents as surrogate agencies for dealing with article 2 related issues. Some state parties may agree to new national human rights institutions taking on this role because they know that by doing so they may avoid criticisms of a more fundamental nature.

Thus after many years of work, the Asian Legal Resource Centre began publishing *article 2* to draw attention to this vital provision in international law, and to raise awareness of the need to implement human rights standards and provide effective remedies at the local level in Asia.

Relevant submissions by interested persons and organizations are welcome.

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Foreword: Dual policy approach needed on Burma

Basil Fernando, Executive Director, Asian Human Rights Commission & Asian Legal Resource Centre, Hong Kong

Despite many decades of talk about democracy in Burma, things have further degenerated. Unfortunately, this comes as no surprise. That the global democratic movement as well as the human rights movement has failed to make an impact is not a matter of bad luck. There are some fundamental flaws within these movements that are contributing to failure. Those of us concerned with these movements need to look at them and ourselves self-critically if improved strategies are to be found to address the problems of Burma.

The biggest flaw is the failure of democratic and human rights movements to understand and articulate the linkages between justice and politics, and how strategies can be developed to address the two simultaneously.

Various forms of pressure on a political front may eventually force a military regime to give in to demands for democratic reforms, but these may also fail to account for the consequences to mechanisms of justice in a country that has been under military rule, which in Burma's case is now effectively into its 50th year. Many years of neglect and deliberate abuse of justice institutions results in them withering and becoming all but dead, even if still housed within the body. No amount of simple political pressure can revive them. In fact, the justice system of Burma is in an even worse situation. It is like a living-dead organ, existing for the purpose of supporting military rule. It is a system of injustice that has become organically linked to the equally unjust political system of the country, and one that if pressured can but work harder to support the diseased body with which it has become fully integrated.

Globally, the demands placed on military regimes are articulated in very simple terms. They often come down to the holding of an election so that a government of popular choice can be installed. There is nothing objectionable in that. However,

a political system that has destroyed a country's justice mechanism cannot be changed by a mere election, for at least two reasons.

First, often elections are not honoured, as was the case in Burma when the National League for Democracy overwhelmingly won the vote but was not allowed to take office. The same thing happened in Cambodia when the FUNCINPEC party won the May 1993 UN-sponsored ballot but was forced to share power with the Cambodian People's Party of Hun Sen, which later consolidated control and has effectively brought about a one-party system of the sort that preceded international intervention. There too the ruling group has used the courts to ensure firm control of parts of government not directly under the executive.

Second, the political and judicial system may be so perverted by military control that it may bring into power unlikely and unsuitable candidates and it may anyhow be impossible for whoever takes power to do anything about the institutional arrangements. This is the problem faced in Thailand, where the courts have become complicit with the armed forces and other powerful groups in the country in defeating the political party process itself. That the country is increasingly treated as ungovernable by anyone apart from an authoritarian-type leader is not a consequence of the behaviour of its people or anything innate in the workings of its institutions but a consequence of a deliberate agenda towards that end by these groups who are hostile to people having a genuine say in what goes on in their lives.

Why has the global human rights movement not challenged itself over these failings? Why have the real problems of military control, political power and justice remained so far removed from much of its debate? As is taken up in the editorial of this special edition of *article 2*, one of the reasons is that intellectuals from the developed world, who are still the strongest players in this discourse, do not have living experience of the real problems. For them the rule of law and the institutions of justice are as part of the real world as the air they breathe or the water they drink. Their systems are sufficiently advanced that those who come into them and debate their mechanics cannot conceive, other than at a shallow intellectual level, of political and legal systems that lack all of the qualities which they take for granted.

When an intellectual from a developed country comes across problems of the sort found in a country like Burma he or she may hold the view that if enough political pressure can be generated from outside in tandem with that from a local movement then surely something must budge. All the effort goes in to "regime change" when experience shows that even a short term and oversimplified goal like this often remains beyond reach, and in places where it has succeeded, such as the Philippines and Indonesia, although conditions may in certain respects improve, the forced collapse of institutions under the old regimes have lasting and intense consequences for the new ones. Over

"Why have the real problems of military control, political power and justice remained so far removed from much of the global human rights debate?"

time people in some places begin to doubt that there was actually any change at all, apart from a reduction in overt violence for a while. And even this gets back in under the new regime after a brief interval, in the absence of mechanisms to deal with it.

> "There is a vast disconnect between the group that dominates global debate on human rights and those who best understand from lived experience what the debate is all about"

That the intellectual leadership for democratic change and human rights worldwide is mostly housed in countries that broadly enjoy democracy and human rights is unsurprising and is not necessarily objectionable. But as the intellectual discourse in these countries is disconnected from the experiential dialogue among people in countries without these conditions, there is a vast disconnect between the group that dominates global debate and those who best understand from lived experience what the debate is all about.

For so long as this disconnect remains so too will the flaws in these movements persist and even grow larger. Occasional get-togethers, seminars and joint publications do nothing to address this breakdown in communication, and nor can the small number of experts in the west claiming to have knowledge of what goes on in other parts of the world from book-learning, theoretical calculations and contact with members of other countries' elites. The only way out is by improving the means for people who are directly suffering these problems to better articulate them for larger audiences in order that persons interested to reappraise and reconfigure human rights and democratic movements beyond the borders of their own states may do so in a more informed manner, such that new discourses and strategies can emerge.

article 2 has been dedicated to the task of better exploring and detailing the real human rights and rule of law conditions in countries around Asia from its inception in 2002 to the present day. This special edition of article 2, 'Saffron Revolution imprisoned, law demented' (vol. 7, no. 3, September 2008) is another attempt in this direction. It has been a lonely path of articulating these problems in the implementation of human rights through legislative, judicial and administrative measures in terms of article 2 of the International Covenant on Civil and Political Rights in countries where conditions fall far short of the standards found in the west, let alone those of the United Nations. We can only hope that this debate over time obtains adherents and advocates among people not only in our own part of the world but also in more developed jurisdictions (as distinct from more economically developed countries) and that their work together with our own will shift the global debate on human rights in a new direction, one that will bring us to a better shared understanding of the linkages between justice and politics and what they mean for movements on and in countries such as Burma.

Perhaps a lesson in these linkages and the prospects for meaningful change in Burma can be found among the ideas and strategies of people involved in the recent struggle against dictatorship in Pakistan. A book written by Muneer A Malik, *The Pakistan Lawyer's Movement: An Unfinished Agenda*, gives a very

vivid and detailed picture of how this movement, particularly since 2006, worked according to a "dual policy approach" which combined struggle for regime change with struggle for legal reforms, not in committees and reports, but as a national issue backed by the public on the streets. Here is an extract from the book:

> "In Pakistan the 'dual policy approach' has combined struggle for regime change with struggle for legal reforms, not in committees and reports, but as a national issue backed by the public on the streets"

> As a teenager, I remember reading newspaper reports about a judge by the name of M R Kayani who was going around the country on a lecture tour and in the process arousing public sentiment against Field Marshall Ayub Khan. I then did not understand the issues involved but I do recollect that Justice Kayani's tours were exciting the adults around me. I think I was the first one who suggested to the Chief Justice that he should undertake a tour of major bar associations and address them on the constitutional issues at stake, namely, the independence of the judiciary, the supremacy of the rule of law as opposed to the rule of men, the principle of separation of powers, and empowering the weaker sections of society through judicial activism. The manner in which the Chief Justice had been treated on 9th March and subsequently manhandled on 13th March had generated considerable ire and fire in the bellies of persons who watched television or read the newspapers. With the press and electronic media giving extensive coverage to the lawyers' movement, we were certain that huge crowds would turn up along the route the Chief Justice would take to journey to bar associations and along the way the leadership of the bar would have an opportunity to address ordinary citizens and in the process educate them about the fundamental rights that they enjoyed under the Constitution, the manner of realizing these rights and the true meaning of justice, and why it was essential for them to embrace these ideas.
>
> The Supreme Court had itself in a number of cases held that the constitution was an organic document that needed reinterpretation according to changing times and needs of the nation. We had no cavil with this jurisprudential principle. However, we were of the view that the needs and aspirations of the nation could be better understood with reference to the voice of the people rather than the viewpoint of military generals and the bureaucratic, feudal and capitalist establishment. Unfortunately, our courts had generally tilted towards the latter and failed to give adequate consideration to the desires and aspirations of the public at large while engaging in the process of constitutional interpretation. We wanted to directly involve the people of Pakistan in the chartering of their constitutional destiny.
>
> Our tours of the Bar Association, and the huge crowds we attracted, aroused much fear and apprehension within the corridors of power. The government hit back by accusing us of politicising the issue. They said we were trying to intimidate the judges hearing the Chief Justice's case through a show of public power and that our conduct amounted to contempt of court. Nothing could have been farther from our mind. We wanted to strengthen the hand of the judiciary vis-a-vis the dictator. We wanted to impress the judges on the bench with the mass public adulation and support for a judge who is seen as being fearless. We hoped to empower them; in future, to show similar resolve and to lose all fear of bullying regimes. Detractors argued that our movement made judges too vulnerable to public pressure. I strongly disagreed with this point of view. But, in any event, if some level of vulnerability was inevitable we considered it was better—on the whole—for judges to be vulnerable to public opinion rather than dictatorial whims.

"Despite all the UN experts, diplomats and officials talking about Burma, how much effort has been paid to documenting and monitoring the work of its judicial system in terms of international standards?"

...

The first element of our strategy was to change beliefs that had enslaved the masses even after their liberation from the colonial rule. They had been indoctrinated with the false idea that there were two sets of rules—one for the powerful and one for the meek—and were taught to be subservient at the cost of liberty. No doubt, this belief system was a product of our colonial past but, after the departure of the British, our local *baboos* simply stepped into their shoes and worked assiduously to maintain and preserve the system. They assumed the responsibility of keeping the masses in control in order to protect the privileges of the ruling class. We wanted to educate the people that their fundamental rights and liberties could only be realized under an independent judiciary and we wished to explain what we meant by an independent judiciary. It meant a judiciary where the fearlessness and courage displayed by the Chief Justice on 9th March would not be novel or unique and where every judge throughout the land—from the lowliest magistrate to the highest judge—had the courage to look the executive in the eye and say "No". We had to convince them that only bold and independent judges could provide them redress from the oppression of the *wadera*, the *seth* or the officer in charge of a police station.

The second element of our strategy was to change the mindset of the judges, especially those who manned the superior courts. Regretfully, the chequered history of our judiciary was essentially one of subservience to those who controlled the coercive power of the state. It was not that the concept of trichotomy of powers, and the principle of separation of powers was alien to them but in their own minds they viewed themselves more as civil servants than as holders of constitutional posts charged with a sacred duty under the constitution. It was this state of mind that led them to rely on the reviled doctrine of necessity in validating extra-constitutional take-overs. We needed to inculcate in them the belief that the effective exercise of their writ was directly proportional with theft moral authority and the credibility that they enjoyed in the eyes of the masses and that their true duty was to provide justice to the weaker sections of society irrespective of any pressures or constraints imposed by the ruling elites.

The third element of our movement was to change the mindsets of our political leadership. Many of our supposedly democratic political leaders betrayed a lack of faith in the strength of the people of Pakistan and preferred to enter the higher echelons of power through deals with the establishment and foreign powers. We sought to convince them that the only reliable road to Islamabad runs through the towns and hamlets of this country and not from London or Washington DC and that no cabal of generals can resist the march of a people united and mobilised by a shared ideal. Simultaneously, we wished to remind them that a free and democratic society rests on the edifice of an independent judiciary.

Finally, we wanted to change the mindset of the military, bureaucratic, feudal and capitalist establishment itself. They needed to learn that they could no longer continue to lord over the masses like a foreign occupying force. Their very survival depended on ending their isolation and alienation from the masses.

By now this movement combined with others has achieved a partial regime change, as General Musharaff was forced to resign the presidency under threat of impeachment. However, the more important aspect of this struggle is, despite significant advances,

as yet unfinished. That is the struggle for the independence of the judiciary, which has become a matter of national significance, and one to be reckoned with in the political, social and legal life of Pakistan. This issue, which awoke in the powerful street movement for rule of law and the restoration of judges dismissed by the ousted dictator, has taken root in the country and will continue to make its influence felt irrespective of which regime has power.

If more people in democratic and human rights movements locally and globally adopt this sort of dual approach, adapting it as suitable to their own circumstances, new opportunities may open up in places like Burma rather than simply by putting pressure on its military regime to hold an election and admit some superficial political reforms. This can be done in many places and at many levels. For instance, despite all the United Nations experts, diplomats and officials coming and going and talking about Burma, how much effort has been paid to documenting and monitoring the work of its judicial system in terms of international standards and putting forward proposals on specific items that need to be addressed, items on which the government will feel some obligation to respond and on which local lawyers, human rights defenders and activists also can work in their respective ways? The answer to this question is shorter than the question itself. No such work has been done, even with the presence of country offices like the UN Office on Drugs and Crime. Monitoring and reporting on the policing system similarly has so far amounted to nothing, other than that incidental to other research. The human rights movement has remained stuck at the point of documenting individual violations and incidents without steps to bring that work into bigger and more meaningful studies on systemic issues. Serious work in these areas could be more effective than the types of two-dimensional back and forth about political party issues that goes on at the moment. It is in this respect that we now need to develop our thinking and planning and hone our expertise if better strategies for the protection and the promotion of human rights of people in Burma are to figure in the global democratic and human rights agendas.

“The human rights movement has remained stuck at the point of documenting individual violations and incidents without steps to bring that work into studies on systemic issues”

Introduction: Saffron Revolution imprisoned, law demented

Editorial board, *article 2*

One year after the nationwide monk-led protests that shook Burma in response to a dramatic and sudden increase in fuel price rises on 15 August 2007, which became known around the world as the Saffron Revolution, the cases of hundreds of people and forcibly disrobed nuns and monks who are accused of having had key involvement in the rallies are winding their way through the country's courts. The cases are, as in the manner of the crackdown itself, characterised by patent illegality and often are little more than an exercise in nonsense, where the courts are being forced to participate in their own debasement and caricature. The trials are being held behind closed doors, with charges brought under one section of law and changed to another, without investigating officers being able to bring any evidence or even say when or where an alleged offence occurred, police witnesses admitting that they know nothing about the cases that they are presenting other than that they have been ordered to come and present them, and judges sitting as spectators to the absurd charade.

The handling and movement of the cases through the courts is consistent with the handling of the protests themselves. As the *article 2* editorial board wrote in the introduction to the special report on the protests and what it characterised as Burma's injustice system of December 2007 ('Burma, political psychosis and legal dementia', vol. 6, no. 5-6), the defining characteristic of the crackdown was its patent illegality by all standards of law, including the country's own law. Arrests were not even in state-run newspapers described as such, instead rather as incidents of people being "brought, investigated and questioned". Accused persons were abducted and held in unofficial sites, from a technical training institute, to an old racetrack, to the military dog pens. The one place where they were not held was a police station, even though no declaration of emergency or any other extraordinary law was introduced to authorise the authorities to behave outside of the ordinary law, which requires that the police be custodians of criminal detainees, and that anyone be brought

before a judge within 24 hours. Nor have prisoners had access to the International Committee of the Red Cross (ICRC), which has been unable to obtain access to facilities in Burma since the government insisted on having its representatives attend interviews between ICRC staff and its charges, which is in breach of the committee's charter.

> "The takeover of the judiciary in Burma was not something that just happened by accident"

This latest special edition of *article 2* is concerned, in keeping with the previous report, with going deeper into the systemic problems in policing, prosecutions and courts in Burma. To do this it contains detailed study of a number of cases of detainees following from last September's protests, placing them against a historical backdrop in which the country's legal system was demolished from the 1960s onwards. The historical elements in current problems of dictatorship, law and human rights abuse in Burma were touched upon in the December special report. Now the Burma desk of the Asian Human Rights Commission has for the purposes of this special edition researched historical legal records and texts that have mostly been overlooked by conventional historians and academics, as well as the human rights movement on Burma in general, to examine how the system of justice that at one time existed, albeit imperfectly, was destroyed with dramatic consequences for the present day. The neglect in studying this aspect of systemic change in Burma is in part from a tendency to be overawed by the extent of military authority that has grown there and from a failure to recognise that the takeover of the judiciary was not something that just happened by accident. To take for granted that as an army is strong then everything else is by default weak is erroneous. The judges, lawyers and ordinary citizens of Pakistan have in the past year shown how false that reasoning is, with a resounding victory over their immensely powerful armed forces. The Saffron Revolution was itself a statement to the same effect, but in Burma it was hampered by the systematic demolition of all other organs of government outside of the executive over the past half a century.

In the 1950s, despite extremely pressing conditions, the judiciary in Burma was able to maintain a degree of independence and integrity that surpassed that of most of its neighbours. There were many fraught struggles played out in the courts between and among politicians, powerful people and the courts themselves, but the courts, especially their upper echelon, managed to retain a sufficient level of credibility to sustain their work. Having survived the first very difficult decade after independence they might have been expected to improve and expand their role, experience and responsibilities from that time onwards. However, the military takeover of 1962 put an end to all that. The new regime began a project to systematically dismantle all parts of state that could oppose it, and in particular targetted the courts. The pathetic legal conditions in which protestors from last year find themselves in before the courts of Burma today are a direct result of the project for legal demolition that has been carried out since that time.

"There are many fine lawyers in Burma who continue to fight for a tradition of legality in conditions where it is all but absent"

The December 2007 special report of *article 2* on Burma characterised its legal system as suffering from dementia. This diagnosis of the system in medical terms was not frivolous. It was based on a number of years' careful study, advocacy and discussions with practitioners, who like medical practitioners are from their experiences able to construct a detailed picture of where ailments exist and the causes of these. From tracing the work of Ne Win, his chief justice and architect of legal collapse, Dr Maung Maung, and their assorted accomplices over the 1960s and 70s the causes of the dementia become apparent. A system that was at one time relatively sane was driven mad by the succession of techniques devised and implemented for executive control first over its head, then its entire body.

The sorts of wanton abuses of both persons and law described in the ten case studies that are at the heart of this edition of *article 2*, which have been selected from a large number of such cases that the Asian Legal Resource Centre has documented since last year, then, are not new. They are not issues that suddenly arose with the military takeover in 1988. On the contrary, they are the consequence of a deliberate programme for the perverting of law that was begun around a quarter of a century before that time, and has simply been further embedded under the current regime. In fact, this regime has done nothing unique at all so far as the un-rule of law in Burma is concerned. It has merely carried on and further deepened the work of its predecessor, perhaps only with a greater ruthlessness, and certainly with disinterest in the sorts of ideological cover attempted by its predecessor.

It is clear that the extent of damage to Burma's legal and administrative system is enormous and the need for work to rebuild and restore what has been lost will also be vast and lasting, irrespective of whatever else happens. Fortunately, there are still many causes for hope. Apart from those defendants and litigants that continue to make demands on the system, and are able to recall something of what it was before it was reduced to an administrative arm of despots, there are many fine lawyers and human rights defenders familiar with the workings of the courts in Burma who continue to fight for a tradition of legality in conditions where it is all but absent and where to do the sort of work that a lawyer in an established jurisdiction would take for granted is a big personal risk. Among them are ordinary criminal lawyers who also volunteer their services quietly for indigent clients who are the victims of abuse by powerful or influential people. Others handle nothing but human rights cases, their other clients having deserted them, and as a consequence daily face official harassment and scrutiny. It is to all of these lawyers and their clients alike to whom this edition of article 2 is dedicated.

The historical outline and case studies taken together, this publication should be of special interest not only to persons concerned with recent events in Burma but also those concerned

with the decline in the rule of law across Asia generally. At the moment the continent is stuck between different types of equally irrelevant rule of law debates. There is one type of debate that goes on among intellectuals in countries where the rule of law is relatively well established and the institutions of the state and personal liberties reasonably well protected that is critical of the rule-of-law tradition for the very reason that it can afford to be. Most of these interlocutors take for granted the working of laws and courts and presume things about the management of societies that place the starting point for their debates already so far away from what happens in a court in Burma or the Philippines that what follows from there is plainly irrelevant. On the other side there is an uncritical discourse on the rule of law that has spread out like a thin and uniform wash globally. In this one, a uniform version of the rule of law is unquestioningly promoted through international agencies and a few relative success stories are held up as models for everyone else. This developmental rule of law agenda enthusiastically cheers on any evidence that things are moving along its predetermined path, while leaving the anomalies for strategic analysts to sort out, so that Burma ends up somehow more like North Korea, rather than neighbouring Thailand or Bangladesh.

> "The decline in the rule of law across Asia has been borne out in many high quality studies in *article 2* during the last couple of years"

Away from both of those types of the rule of law, this publication has had as its abiding concern with its study in terms of its intimate relationship to human rights in Asia, and with special reference to the availability of the means for redress for wrongs committed as established in article 2 of the International Covenant on Civil and Political Rights. It has had as its concern not the expanding of a type of the rule of law that satisfies diplomats and simpleminded groups, again mostly based in the west, that use meaningless statistics and various numerations to assign countries in the region (and elsewhere) ranks as if drawing up a football league table rather than dealing with highly complicated and context-specific problems and issues, but rather the felt experiences of people living in countries in the region and what these tell us about the state of affairs in their countries. It is for this reason that whereas many groups and researchers that have studied mostly elite affairs and abstract notions of the rule of law and human rights have posited an improvement in conditions in Asia during recent years, the Asian Legal Resource Centre has reported on their overall decline.

This decline in the rule of law across Asia has been borne out in many high quality studies in *article 2* during the last couple of years alone, all of which have spoken to the pressing concerns for institutions of criminal justice, of policing and administration of law, government and society, at a time that in many quarters growing economies and the appearance of some democratic forms have masked the deterioration or demolition of other parts of the state apparatus. In 2007, a special report on the Philippines exposed the reality of a non-functioning criminal justice system and the difference between functioning institutions and those that exist superficially but not in fact ('The criminal justice sys-

tem of the Philippines is rotten', vol. 6, no. 1, February 2007). In the middle of that year, a special edition on Thailand warned that due to the military coup of the year before constitutionalism in that country was now very much at threat: a warning that has been borne out vividly in events there of the last month or so ('Thailand's struggle for constitutional survival', vol. 6, no. 3, June 2007). Another special report on Bangladesh from the year before examined how the exercise of what is described as law enforcement may go on without the use of law at all, distinguishing law enforcement from its more common counterpart in Asia, order enforcement, which can go on with or without the law ('Lawless law enforcement and the parody of judiciary in Bangladesh', vol. 5, no. 4, August 2006). A number of in-depth articles on Sri Lanka have taken up, among a range of matters, how constitutional amendments and other politically-aimed changes have over some decades dismantled those parts of the system that lent themselves to a rule of law there, and how as in 1960s Burma the judiciary has been beaten down and demoralised both from without and within ('Dysfunctional policing and subverted justice in Sri Lanka', vol. 6, no. 2, April 2007). And most recently, the particular problems associated with judicial delay, an issue plaguing India, were taken up in a carefully documented special report on the courts in Delhi ('Judicial delays to criminal trials in Delhi', vol. 7, no. 2, June 2008).

> "This edition should be of interest to students of the rule of law and human rights in all parts of Asia, who may find that the experiences of people in Burma have more in common with their own than they might have assumed"

Although each of these editions goes into the particularities and peculiarities of rights abuse, law and institutional behaviour in the country under study, each is bound to the others through distinct thematic linkages, and it is in keeping with these that this most recent special edition on Burma has been prepared. For this reason too this edition should be of concern and interest to colleagues and students of the rule of law and human rights in all parts of Asia, whether they be in Indonesia or Pakistan, who may find that the experiences of people in Burma have more in common with their own than they might have assumed from the reduced and simplified reporting on that country which dominates global media, and unfortunately much of the human rights documentation as well. The story of Burma's judiciary in the last 50 years, above all, offers a sober lesson for persons in other countries who may be mistaken for thinking that a judicial system once established to some extent cannot be pulled to pieces again within a short time. In Burma this was done systematically and in a number of phases, the first blows to the system so soft as to be almost unnoticeable. Even once the military regime took power, it was careful not to take on the judiciary as a whole, but go at it a piece at a time relying on its agents to pull it down from within, so by the time that the true scale of the operation revealed itself, it was already too late.

Cyclone Nargis

Burma caught the world's headlines for the second time in a year when in May the immense natural disaster that was Cyclone Nargis struck the country. Not only did the military regime resist efforts to extend to it foreign assistance and instead persisted with a farcical referendum to wave through its new constitution, but it also has taken legal action against some persons in the country who tried to fill the gap left in the absence of foreign donors by collecting money and materials and going to distribute these themselves, some of whom then spoke to radio stations based abroad about what they had seen and done. Others involved in gathering and burying dead bodies also were detained, as were local journalists. The patterns of illegal custody, sporadic or non-existent criminal procedure and blatant abuse of fundamental rights that are seen in the cases arising from last September can also be seen in these events and cases. This edition contains a brief article on these and related concerns arising from the cyclone tragedy, which the Asian Legal Resource Centre continues to monitor closely and document with a view to further analysis and reporting at later dates.

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The guillotine is no solution to despair

Asian Human Rights Commission statement, AHRC-STM-006-2008, January 7, 2008

While expressions of despair manifest themselves in many countries in the Asian region, all that the governments of these countries offer to those who express their despair is the guillotine. Ruthless repression by way of causing forced disappearances, assassinations, torture and the destruction of property are the only responses of these governments to expressions of protest arising out of the deepening of the processes of poverty, causing of unemployment, destruction of livelihoods and increasing discrimination. The recent examples from Burma, Pakistan and Sri Lanka demonstrate this.

Over forty years of militarism has destroyed the livelihoods of the majority of people in Burma. Only a handful that are close to the military regime and others who participate in keeping the machinery of repression alive obtain some benefit from the situation. Together with destitution, destruction of livelihoods and widespread poverty there has also been the destruction of the entire political system and the administration of justice. There are no credible means of public representation through political leaders or parties. There is no free media and the system of the administration of justice after years of suppression has disappeared. The policing system is basically a surveillance system on the people and independent investigation into crime does not exist. Naturally there are no independent investigations for the abuse of human rights by the military regime itself. Even under these circumstances the people have tried to organise and express themselves. The last such intervention was in September 2007. The response was a brutal crackdown including murder, forced disappearances, secret imprisonment, torture and displacement of dissidents including Buddhist monks.

The only outlet that the people could have relied on was an investigation by the United Nations, but this move was defeated by strong players in the international community including the Indian government. The Indian government argued that since the military regime promised to conduct inquiries no external inquiries were necessary. If a murderer promised to conduct an inquiry into the alleged murder, or for that matter any alleged criminal gave an undertaking to conduct the inquiry into the criminal act, anyone would see the ridiculousness of such a situation. The Indian government, which calls itself the largest democracy in the world and which also got the largest number of votes to sit in the UN Human Rights Council, does not see this as ludicrous. In fact, this is deliberate hypocrisy which some attribute to the possibly little advantages that India may have in the exploitation of some of the natural resources of this desperately poor country. The rest of the international community was not able to do anything in the face of such a ludicrous situation.

The result is that the people of Burma are continuously subjected to the draconian military rule of the regime that can do whatever it likes with the lives of the people. This includes keeping about 40 per cent of the children in the country living in a state of malnutrition.

With the spread of the ideologies of anti-terrorism any legitimate protest can be made to appear as a crime. When people in despair, facing nothing but repression, try to get themselves out of this situation the state offers them only the guillotine. The people are trapped and often ask, how are we to fight against the conditions of poverty and repression? There is no answer to this under the present circumstances.

Those who wield the guillotine not only crack down on all acts of protest but also triumphantly claim that they are doing this in order to save humanity from terrorism. Within this context, mass murderers appear as heroes. There is hardly any sense to be found in the discussions on this issue...

Ne Win, Maung Maung and how to drive a legal system crazy in two short decades

Burma Desk, Asian Human Rights Commission, Hong Kong

September 2008 is a month of many anniversaries for Burma. It is, as this special edition of *article 2* (vol. 7, no. 3, September 2008), is commemorating, a year since the Saffron Revolution on the streets of cities and towns all around the country, so named because of the leading role that Buddhist monks had in its shape and direction. The uprising was the largest of its size in two decades, and one that pundits, analysts and so-called experts around the world said couldn't or wouldn't happen. That it did speaks to the intense anger that people throughout the country feel with the ineptitude and greed of the army officers who insist on remaining in control. It is also 20 years since the current regime took over power after months of unrest and strikes throughout that historic year of 1988. But there is another anniversary, perhaps the most important of them all, that has passed almost without comment. That anniversary is the agreed handover of state power to the "caretaker" government of General Ne Win in September 1958, a coup by stealth that opened the door to the tragedy of military dictatorship from which the country continues to suffer to this day.

In 1958 Burma was faced with intense and serious problems, including continued rampant crime and widespread insurgency, political turmoil and economic difficulties. In fact, these had been persistent problems for the first decade of its independence and it is arguable as to whether or not conditions were any worse in that year than they had been earlier. On some fronts things were definitely better for the administration than they had been in previous years. That the administration had managed to establish itself and survive the first few chaotic years, when at times it had been described as the "Rangoon government" because its authority had not extended beyond the city limits, was itself an accomplishment. The courts had under the circumstances held up relatively well. Although there were many of complaints of corruption and ineptitude in the lower levels these were matters

that could have been addressed over time, particularly as the upper courts had throughout shown a relatively high degree of integrity and leadership, often standing at loggerheads with government interests. Although under heavy scrutiny and constant challenge, particularly from political forces, the system as a whole had remained intact and workable.

But in the 10th year since independence some other things happened that led the army into power. One was the army itself. It had gone from being a poorly-organised and badly-equipped liberation force, and one blamed for many excesses, into an integral part of the apparatus of state, one which had cut its teeth fighting civil wars on multiple fronts and that did not feel the need to take orders from anyone else. Another was the ten-year clause in the constitution that would allow the Shan States to break away from the union and form an independent territory. It was the threat of this event that was one of the pretexts for the push to take power. Then there was the maturation of a conflict within the ruling party, the Anti-Fascist People's Freedom League, which led to fissures within the armed forces as well, alongside a range of other political intrigues.

The upshot was that on 23 September 1958 army officers visited the prime minister, U Nu, and warned him that they may not be able to control the army and prevent a takeover by force for much longer. With other officers they planned for a negotiated transfer of power to the army commander, General Ne Win. On September 26, Nu agreed to hand over the prime ministership after a month. It is this anniversary that is perhaps the most tragic and overlooked of all those in Burma's modern history, and to which subsequent events also owe a great deal. There could not have been a 2007 or 1988 but for 1958.

General Ne Win: 'Constitutional' coup-maker

The consequences of a 'constitutional coup'

The 1958 stealth coup gave Ne Win the perfect opportunity both to accustom himself and the army to the leadership role as well as act the hero of the nation and claim to be working on behalf of the public and in accordance with the constitution. He played the role of servant to the parliament rather than master, and paid lip service to fundamental rights. The courts continued operating apparently as before and were lulled into a false sense of security about the

work of the administration and its supposed sense of fair play. Meanwhile, the first soft blows were being landed, with a political vigilante group set up to check and monitor politicians, their associates, and anyone whom the military deemed a potential threat. The group trained in how to conduct arrests, act as informants and forge close links with police and if possible, judges.

> "The self-styled Revolutionary Council moved quickly to shift the judicial system unequivocally to serve its purposes"

The public and other parts of government acculturated to acceptance of government under a military officer, the full takeover in 1962 was more of a walkover. After arresting the top national figures, the self-styled Revolutionary Council moved quickly to shift all parts of government, including the judicial system, unequivocally to serve its purposes. There was no attempt at keeping legal cover for the takeover, such as in the Philippines where the Marcos regime left the apex court in place. The council set about abolishing the upper courts, along with the parliament and presidency, and in their place established a single Chief Court under its control, to which a journalist and barrister of small repute who had served as deputy attorney general of the 1958 coup group, Dr Maung Maung (not to be confused with a brigadier of the same name) was appointed as a judge. He did his job well enough for his commander-in-chief that he was promoted to chief justice in 1965, and later became judicial minister for the purpose of destroying what remained of the system of courts that had existed prior to the army takeover. He ended up as a member of the executive council that ran everything in the years of the one-party parliament set up from 1974 and in 1988 was the president for a month at the height of the turmoil that ended in massacres and renewed army control.

Although the subordinating of the courts to executive control came through the 1962 takeover, it depended upon a project to bring the courts system down from within. The judiciary is at any time the weakest of the arms of state, and in Alexander Hamilton's words, "has no influence over either the sword or purse; no direction either of the strength or the wealth of the society... in continual jeopardy of being overpowered, awed, or influenced by its coordinate branches", but its accumulated principles and habits do not by default disappear with the emergence of a military dictatorship. They must be eradicated. An overwhelmingly powerful army may dominate the state, but it cannot take over completely without strategies to control other parts, and not least of all, the courts. This cannot be done overnight. The sacking and replacement of superior courts may cause great damage to the system, but to bring the whole thing down requires a programme. Such a programme, implemented from 1962 onwards by the partnership of a general, Ne Win, and a holder of two doctorates, Maung Maung, brought Burma's courts under control of the executive, and turned a sane legal system into the demented one that it is today. Whereas the intellectual classes in Asia like to represent themselves as progressive forces, Maung Maung is a classic example of what they more often represent: an intellect with no real ideas of his own who in the service of a dictator drove a flawed but working justice system into the ground.

Let us not praise coups

Awzar Thi, UPI Asia Online, July 3, 2008

An Oxford economics professor said in a recent Washington Post article that the best hope for either Burma or Zimbabwe is that military officers might overthrow their respective dictators and leap through a window of legitimacy held open by the free world ("Let us now praise coups," June 22).

"Rather than trying to freeze coups out of the international system, we should try to provide them with a guidance system," Paul Collier has written, adding that in countries like Zimbabwe and Burma coups "should be encouraged because they are likely to lead to improved governance."

There is nothing new here. Coup making worldwide has for decades been premised on this fraud that if things can't get worse, surely they can only get better. In Asia, people from Pakistan to the Philippines have been forced to pay for the fraud again and again, yet still it is circulated as if an original proposal to the world's intractable problems.

The people in Burma, for whom a coup is somehow being posited as a cure rather than yet another curse, are already repeat victims of this fraud. It was in 1958 that army officers originally cornered the country's struggling civilian prime minister and put it to him that he had better hand over power or they just might not be able to control their boys.

The "caretaker" regime that followed built its legitimacy on precisely the argument that it would do a better job of governing than the corrupt, inept and violent political parties that had been mucking things up for a decade since independence.

To this day it is credited with having restored order, yet when it handed back power to the electorate in 1960 it was not military-backed candidates but those of the former government who were overwhelmingly voted back into office. The public was less impressed with army discipline than the economists.

Still, General Ne Win at the time received credit for stepping down peacefully and it was not until 1962 that the fraud was exposed, when he stepped back up again, this time for good. Burma didn't have another election for a further three decades, and then, when the outcome was the same as before, the soldiers didn't bother with any pretense.

What the experts and intellectuals missed in the 1960s, and what some of their peers seemingly continue to miss almost half a century on, is that coup making is habitual. Once armies get the taste for taking over, they don't lose it easily. The same fraud is perpetrated time and time again; the ailment and the cure become one.

...

The scandalous mishandling of the Cyclone Nargis relief effort that has provoked Collier and others to write well-meaning articles about a country of which they know nothing is still being played out in the lives of millions there daily. There are grave fears for food stocks if rainy season crops are not soon planted across the damaged areas of the delta.

Whether or not any of this might give cause for a coup of the sort upon which junta opponents have already hung their hopes for years is a matter of conjecture. But that just about all of this is the consequence of a coup, or two, is a matter of undeniable fact.

Let us not praise coups, and let us certainly not wish them upon people who are already acutely suffering their iniquities. They are not a way out of trouble but a way into more of it. No better advertisement of this exists than Burma today.

The special criminal courts

After the top courts were replaced in 1962 the ordinary courts were left alone and again given the false sense that things would to some extent go along as before. With the judiciary still operating according to its own rules and the habits of its personnel, the new ruling group couldn't fully rely upon it to heed its bidding. So, it established a new category of "special criminal courts", in fact administrative tribunals consisting of three members under executive control.

"Although there is virtually no mention of the special criminal courts in conventional histories on Burma, they were vital to the programme for destruction of the legal system"

Although there is virtually no mention of the special criminal courts in conventional histories on Burma, they were vital to the programme for destruction of the legal system. Under the edict to establish them (Law No. 15/1962), they were placed outside of the ambit of the ordinary courts and were authorised to try crimes of insurgency, crimes of obstructing state policy and programme, crimes against the society and other "important" crimes. There were only three penalties: death, full life imprisonment, or a minimum of three years with hard labour.

The courts were from the start given significant authority to do the work of the legal system from outside of it, but this authority was quickly widened and blurred. In the first stage of these courts' operations, there was a schedule of offences that they could hear (which covered treason, a host of offences under the Penal Code, Arms Act, Emergency Regulations, Opium Act, Unlawful Associations Act, Public Utilities Protection Act and Public Property Protection Act), but in an amendment the next year (Law No. 34/1963) the schedule was erased, leaving it up to the executive to pick and choose any case to go to the tribunals as it pleased. More importantly, in the original law in cases where the death sentence or a seven year or above jail term had been imposed the defendant could appeal to the Chief Court, but two years later the law was amended (Law No. 11/1964) so that a new appeal bench was set up over the tribunals, with no final appeal to the ordinary courts, whose members consisted explicitly of army officers. Thus, the special criminal courts were now a completely sealed off parallel system in which the accused was at the mercy of the same authorities responsible for bringing him or her there.

A range of other powers were also peeled off the courts and handed over to administrative bodies. Powers of judicial review under the 1947 Constitution were effectively lost from the time of the military takeover for want of a parliament and the other organs of state that could make them workable, but over the next two to three years much more of the courts' authority was stripped away. Committees throughout the country were authorised under various laws and decrees to set up and staff dubiously-named area people's courts with the purpose of trying offences against the socialist economic order, and labour and trade disputes. As land and industries were nationalised, these became increasingly powerful bodies which again had peak councils for final appeals, with recourse to the courts explicitly

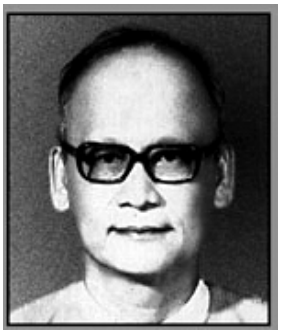
written out of their provisions. For instance, under the Trade Disputes Act Amending Law (No. 20/1963), it was declared that "No award or order passed by the Central Labour Committee shall be called into question in any civil or criminal Court or by writ of certiorari in the Chief Court".

The apex court is surrendered

Simultaneously, the army-appointed Chief Court issued a series of verdicts that narrowed and weakened the capacity of the ordinary courts to operate, and confined their ability to make judgments to the terms explicitly established in Revolutionary Council edicts, and then also in terms of the orders of the special criminal courts' appeal bench.

In the U Thein Zan case the Chief Court stated that although it had taken on the powers and duties of the former Supreme Court and High Court it did not in fact have the same powers and duties but was bound to the terms for the judiciary as clearly laid out by the Revolutionary Council (See U Thein Zan vs. Union of Burma, 1967 BLR [CC] 660). In another case relating to the work of an area people's court it found that with regards to the law for construction of a socialist economy it had no authority to receive appeals, writs or petitions to revise the orders of lower courts beyond what had been explicitly stipulated in that law, in effect writing off not only the role of the courts in helping to make law but also a great deal of their interpretive function, by implying that the state had the capacity to issue unambiguous law (Daw Aye Tin vs. Meikhtila District Area People's Court Appellate Bench and Another, 1971 BLR [CC] 17).

Ultimately the court abdicated its power to the special criminal tribunals completely. In a 1972 case (Maung Chit vs. Union of Burma, 1972 BLR [CC] 28) the Chief Court bench headed by Dr. Maung Maung gave a ruling that the verdicts of the appeal bench of the special criminal courts had to be studied and applied in ordinary courts, for which purpose it had been issuing guidance to subordinate courts around the country, and to which it was itself also beholden to comply. Furthermore, it held that if the special appeal bench had reached a verdict in a given matter then it was unnecessary for a court to refer to any other precedent when deciding on the same type of case. The court registrar ordered that the judgment be distributed to all sessions and district criminal judges and that they in turn take responsibility to see that their subordinates were informed of it and that it was followed (Supreme Court Directive No. 9/1972, 21 July 1972).



Dr. Maung Maung

With this ruling in effect the Chief Court was not the chief court at all. Not only did it make the appeal bench of the special criminal courts the de facto supreme court of the country but also cast doubt upon the capacity of the ordinary courts to perform the role of independent arbiters and interpreters of the law. The verdicts of the special appeal bench had already for some years been published and distributed alongside those of the Chief Court, including without any clarifications where there had been

contradictions between rulings in one place and the other; from this decision it was evident that if there was a contradiction then it was the army-comprised court, rather than the army-appointed court, that had the final say.

> "In 1972, the entire judiciary was converted to an arm of the executive"

Once this point was reached, it was a small step to the complete takeover of the system through wholesale removal of its personnel in 1972.

The legal turns political, the political goes mad

Over the latter part of the first decade of the Ne Win regime Dr Maung Maung left the chief justice's post and worked on a new scheme of "people's courts" based along the lines of some other ostensibly socialist countries, such as East Germany, where panels of untrained citizens were given the job of deciding cases instead of professional judges. In August 1972, on the back of a range of other administrative changes in advance of the new constitution, the entire judiciary was converted to an arm of the executive rather than an independent organ of state when the security and administration bodies at the state/province, district and township levels were ordered to establish justice committees with which to occupy the courts. The special criminal courts were shut down and also ordered to transfer cases over for continued trial in accordance with ordinary criminal procedure; as the administration was now occupying the ordinary courts completely the special courts were no longer needed.

The justice ministry thereafter was responsible to see no less than three persons appointed in each court to try cases instead of a single judge, and to see that among them were "people's representatives" who did not have professional training and who would instead receive advice from law officers. According to the Burma Lawyers' Council, in practice this meant that a panel would discuss and reach a verdict and give it to a law officer to write it up in legal terms. One news item in the *Working People's Daily* from around the time reported that the chairman of the Rangoon justice committee had appointed over 9000 of these people's judges in his division who had in just nine months supposedly given verdicts in a staggering 30,000-plus cases.

Within two years, the work of these courts was further jumbled up when the one-party parliament followed constitutional dictates to establish a Council of People's Justices elected from its own members as the supreme judicial body at the Chief Court, now renamed yet again as the Central Court, and committees of judges were formed at other levels from local executive bodies, all answerable to it, and appointed and removed in co-incidence with the appointing body. The majority of members on the top council were former senior army officers. Its first chairman, from 1974 to 1981 was Thura U Aung Hpe, a former colonel and divisional field commander, still carrying his honorific "thura" for distinguished army service. Another member of the first council was Colonel Hla Maung, also still carrying his rank. Only one of the first council of seven members had a law degree.

Although as in other socialist states the official line still lent itself towards courts reaching their verdicts "independently", all arrangements were made to the contrary.

"Just as the 1932 Soviet constitution had promised rights that could never be delivered, so too in Burma there was no possibility of relief for abuses of fundamental rights"

The bar was abolished and its members made "people's attorneys" on the state payroll. The role of the courts was altered from the adjudicating of alleged crimes to the cooperating with other parts of the state to reduce crime and achieve a socialist economy. It was no longer one of deciding in favour of one party and against another but one of keeping one eye on some kind of law and the other on whatever policy had been cooked up.

Prohibiting fundamental rights

Although the language of the state was couched heavily in socialist rights and duties, and it established various laws to this end, in practice everything had been done to prohibit fundamental rights that had at least to some extent been enjoyed in the parliamentary era. Just as the 1932 Soviet constitution under Stalin had promised rights that could never be delivered, so too in Burma there was no possibility of relief for abuses of fundamental rights of the sort that existed to at least some degree in earlier periods. This can be illustrated with reference to cases of preventive or illegal custody, of which there have been many at all times and under all regimes in Burma's modern history, but which after 1962 have lacked any effective remedies.

In the two years immediately after independence, when government authorities widely enforced emergency powers to combat myriad insurgencies and related violence, Maung Maung, when he was still enthusiastic about things such as the separation of powers, remarked that habeas corpus was "the most popularly invoked remedy". The courts issued numerous orders to delimit the powers of government officials to keep people in custody. Habeas corpus was available both through the Supreme Court, via the 1947 Constitution (article 25[2]), and through the High Court, via the Criminal Procedure Code (section 491). Throughout the 1950s the use of writs had continued to be widespread, in part because they were cheap and easy to file, and through them the courts remained salient and approachable for persons whose rights had been violated. After 1962, writ petitions were not formally abolished in the ordinary courts but there was no longer an independent functioning superior court to receive them and thus they simply became inoperable. But they had also been explicitly prohibited from the special criminal courts under its law (section 9[3]), which is where cases most likely to give cause to charges of wrongful arrest and imprisonment would arise.

Reference to writ jurisdiction was thereafter completely erased from the subsequent 1974 constitution, and the only explicit writ-equivalent petition entertained was for review of lower courts' proceedings on the ground of errors in law. A shadow of habeas corpus remained, through the Protection of Citizens' Rights Law (No. 2/1975), which allowed for complaints to be made against

state officers who abused their power, but there were by this time no independent avenues through which to lodge claims, no practical avenues for the effecting of relief of the sort envisaged by article 2 of the International Covenant on Civil and Political Rights. And as if to make a point, that law was immediately followed with the State Protection Law, 3/1975, which denied the rights under the former to persons detained under its terms, which were extremely wide and continue to be used to this day, including to keep Daw Aung San Suu Kyi confined to her house.

> "The few cases on illegal detention cited in documents speak to a lost understanding of what it ever meant to petition for the release of an illegally detained person"

The few cases on illegal detention cited in various documents, despite the thousands of people detained and many disappeared throughout this time, speak to the total absence of guarantees and the lost understanding of what it ever meant to petition for the release of an illegally detained person. The last citation on habeas corpus in legal digests is from 1965, the same year that Maung Maung took the post of chief justice, but it did not actually relate to a matter of illegal detention at all and so it was dismissed (U Aung Nyunt vs. Union of Burma, 1965 BLR [CC] 578). In another case not in the law reports but written about in the *Working People's Daily* during October 1976, an applicant named Daw Yin Kyein approached the apex court in 1975 with an affidavit to get a release order for her husband and son who had been arrested by military intelligence over a decade earlier, in 1964, and had last been known to have been sent to a "model prison" facility. The government law office repeatedly had the case postponed on various pretexts before finally the staff didn't bother to appear at all and the men's release was ordered in the same month as the news report, over a year after the petition was lodged in the court.

Matters were only made worse at times that special provisions were put in place, such as when military tribunals were established to try and sentence citizens after the dramatic events at the funeral of former United Nations Secretary General U Thant, and the protests in 1988. In the first case, martial law was imposed across Rangoon Division on 11 December 1974 (State Council Declaration No. 4), when university students kidnapped Thant's body and entered a standoff with the security forces. Military tribunals set up to try offenders sentenced them to a minimum of three years. U Kyaw Lin, who was jailed by a military tribunal for three years over an offence (among others) that carried a maximum penalty under the Penal Code of six months, challenged the sentence in the Central Court but it was upheld on the basis that the military tribunals had been established in accordance with the law and the constitution, and there was no attempt to address the substance of his question about the contradiction of law that had resulted in the penalty against him being five times what it would have ordinarily been (U Kyaw Lin vs. Socialist Republic of the Union of Burma, 1978 BLR [CC] 6). And in Dr. Maung Maung's book on the 1988 protests, when fifteen military tribunals were run from 17 July 1989 to September 1992 to try offenders (Martial Law Order, No. 1/1989) a pathetic scene is portrayed of the families of detained students desperately approaching the then-chief justice with letters of appeal for their

release, only for the country's top judge dutifully to turn the documents over to the attorney general's office, where they were also dutifully put on file.

> "A show was made of plans to revise and revoke outdated statutes, but the raft of codes that the British regime had imported from India over a century before remained virtually untouched"

For that, of course, Maung Maung blamed human weakness; surely it could not have been his demented creation. This is something that the designers and disorganisers of the pre-1988 system and the post-1988 system have in common: blaming others for their own disastrous handiwork. In many respects the systems are superficially different, Maung Maung having built up an unworkable and in many respects incoherent monstrosity, neither a fish nor fowl, consisting of borrowed ideas and bits and pieces of the old laws and structures pegged together with incompatible new pieces, the current regime having stripped the judicial system back to the model of straightforward army control from the top. But in both cases the incapacity of the people responsible for the displacement and dementing of the system to accept their responsibility is an abiding feature of the chronic continued abuse of the courts and in the courts. A government that is honest with itself and its people will at least acknowledge systemic faults for what they are, even if either unable or unwilling to do something about them. The greatest sign of political immaturity is in the incapacity to accept this much, and to blame the persons caught in the demented and confused system of one's own making for everything that goes wrong.

Driving a legal system crazy

Burma's legal system was through all of this pushing and pulling of its insides and outsides already suffering from deep confusion and uncertainty for its future, but it was driven mad by the constant reminders also of its past lives. The colonial-era laws at its heart were not extracted or replaced with anything else. On the contrary, people's courts were called upon to enforce imperialist law. A show was made of plans to revise and revoke outdated and inappropriate statutes, but these served the military as well as it had done the occupying order, and so the raft of codes that the British regime had imported from India over a century before remained virtually untouched, as is still the case today. In 11 years the Revolutionary Council officially issued 107 proclamations and 164 laws. Yet of these, the Penal Code suffered minor amendments but once, the Criminal Procedure Code likewise. This remarkably enduring foundation of the legal system is most noticeable in the silences around it in period propaganda and literature. For example, Dr Maung Maung in his 1975 general reader on the new legal system goes on at length about socialist concepts of law, and the bodies and management of the new system as opposed to that of the old, but barely even refers to the codes that were the basis for the orders that these new courts and judges were expected to pass.

As cases were still framed, categorised, brought, argued and ostensibly decided on the basis of these codes, their vocabulary persisted but was twisted to suit the interests of the new regime. Regard was still had to precedent for the purposes of interpreting,

but not making, law; nor, for that matter, in deciding cases, unless it was precedent established via the special criminal appeal bench. The dislike of precedent among the non-lawyers of the special criminal courts was especially apparent. Their appeal bench stated that precedent should be used "only for guidance" and not for reaching a verdict. It also held that precedent should not be treated as legal maxim and each case should be decided on its own merits and in order to "distinguish right from wrong". (Captain Aung Win vs. Union of Burma, 1969 BLR [Special] 25. Ma Khin Myint a.k.a. Ma Khin Nyunt Kyi vs. Union of Burma, 1970 BLR [Special] 1).

Practices fundamental to the common law were also still partly retained and articulated, including the right to a defence, presumption of innocence, the benefit of the doubt, the burden of proof and equality before the law, but they also were disoriented and reduced. Among them, the presumption of innocence is perhaps the only one that continued to be firmly upheld in principle, even in cases where the accused was known to have committed similar offences. The importance of proof was also strongly emphasised in rulings and described as compatible with socialist jurisprudence. This was partly because in accordance with rulings from the special criminal courts the benefit of the doubt was not to be given lightly. It was reduced from an absolute principle to one among others that could be used in arriving at a verdict.

Legal articles and their footnotes were crowded with Latin and English terminology and continued to carry references to judgments from India, despite policy to erase "foreign precedent" and its language of law. Dr. Maung Maung, the foreign-trained barrister, in his general law text now belittled legal professionals who "were pleased with big words and could write long sentences", and lawyers and law officers who, clinging to their big books and degrees, "recite the judgments that Justices Basu, Chaudhury and Bose laid down at the Calcutta, Bombay and Allahabad High Courts one time" but offered no intelligible or durable alternatives. Instead, as the judiciary was now a political rather than legal agency it was instructed to somehow obtain The Truth, rather than disinterestedly weigh up the alternative arguments. Obtaining The Truth, which was a particularly appealing topic for Dr. Maung Maung and one that he couched in the language of a religious ideologue, was not a matter of building upon a heritage of law and body of learning but just getting the facts out of the case at hand. Advocates for opposing parties, law officers and witnesses, although still working according to an adversarial procedure, were now expected to somehow work together towards this goal.

In 1988 the "people's courts" and their baggage were unceremoniously consigned to history when the army shoehorned its way back into power as the old regime collapsed under weight of nationwide protest. But the ugly heritage of Ne Win and Maung Maung was not lost. It continues today in the procedural collapse

"In 1988 the 'people's courts' and their baggage were unceremoniously consigned to history but the ugly heritage of Ne Win and Maung Maung was not lost"

of the system that is inimical to the rights of the public at large, where first information reports, daily diaries and charge sheets are filled out and filed only to record consistent breaches of the very codes to which they owe their existence, where there is no certainty of law and the systemic insecurity for the public in general vastly exceeds anything that preceded it.

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Habeas corpus returns to Burma?

Awzar Thi, UPI Asia Online, August 21, 2008

It is really impossible to say anything about the new Constitution of Burma, which passed through a farcical referendum and into law amid the cyclone chaos this May, without suspending a large amount of disbelief.

That the current regime, like its predecessor, has no faith in constitutionalism need not be said. Its 235-page charter is a testament to this. At every turn it hands power back to the army or its proxies. Even the document itself is somehow supposed to be safeguarded by the military, rather than the judiciary.

Still, among the hundreds of articles to protect the generals' interests are a handful of throwbacks to an earlier era. They include one that on paper has renewed the authority of the Supreme Court to issue writs, including those of habeas corpus. This means that technically the court can now have any detained person brought before it to find out how and why they are being held in custody, and decide whether to free them or not.

That would be a pretty big deal if it could be enforced. After all, there are thousands of possible applicants in Burma's jails right now, many of them who have been held since the protests last year. Couldn't they stand to benefit?

...

Although habeas corpus has the capacity to protect detainees' rights when the courts have the credibility and independence to enforce the law, what happens when these are missing?

In Nepal, at the height of the madness that led to thousands of killings and disappearances and ultimately the collapse of the government in 2005, lawyers routinely lodged habeas corpus writs only to be told that the army didn't have their clients, or if it did and brought them, only to see them rearrested after being set free, many literally outside the courthouses.

When the security forces abducted and killed tens of thousands in Sri Lanka during the late 1980s and early 90s they simply ignored most of the nearly 3,000 habeas corpus writs that families lodged there, often not bothering to appear at all, or again denying that they had the persons in their hands. Complainants were worn out by long, delayed and expensive hearings from which the perpetrators ultimately walked away.

Burma's top court is not likely to be issuing orders that would have army officers coming to answer questions about the whereabouts of missing persons any time soon, and in this respect it is different from those in Nepal and Sri Lanka, which have retained some nominal independence.

But what all three do have in common is that they suffer from long-term and deliberate abuse, to the point that they have been forced to participate in the blatant mocking of justice and of themselves. Whether a judge sits in a courtroom waiting for an officer who never turns up or whether he just goes ahead and denies a petition that he knows won't get anywhere is immaterial to the victim and family. It all comes to naught either way, for them, and for the law.

To use the trappings of constitutional form where the essential conditions for constitutionalism are absent can have no effect but to destroy respect for it. Perhaps that's the point after all.

Ten case studies in illegal arrest and imprisonment

1. Khin Sanda Win: Meaningless pledge, lawless system

ACCUSED	*Khin Sanda Win, 23, 2nd year philosophy major, Rangoon Eastern University*
ARREST	*29 September 2007, outside Pansodan Department Store, Kyauktada Township, Rangoon, by persons in civilian clothes, believed to be Swanar-shin and USDA attached to Rangoon Town Hall*
CUSTODY	*Kyaikkasan, 29 September to 7 October; Insein Prison, 7-25 October and 12 November onwards*
REARREST	*1 November 2007, by Kyauktada police*
CHARGES	*19(e), Arms Act, changed to 336/511, Penal Code, brought by Inspector Soe Naing (Kyauktada), Police No. La/147569*
TRIALS	*Kyauktada Township Court Felony No. 525/2007, Assistant Judge U Thaung Lwin (First Class) presiding, Rangoon Western District Court, Revision of Criminal Case No. 323/2007, Judge U Kyaw Swe, Deputy District Judge No. 3, Judge No. Ta/1867, presiding, Rangoon Divisional Court Criminal Case No. 1024/2007*
ISSUES	*Illegally arrested, held at special military camp, released after signing a "pledge", rearrested and charged, bail set at a higher amount than legal maximum, bail unilaterally retracted by judge*
SENTENCE	*Six-months imprisonment*
APPEAL NO.	*AHRC-UAC-022-2008*

A group of men in plain clothes, apparently members of a government gang and a government-organised mass group, allegedly stopped Khin Sanda Win, a 23-year-old university student, in Rangoon at around 10am on 29 September 2007

Terminology

CrPC	Criminal Procedure Code
Kyaikkasan	Location of military interrogation facility
MAS	Military Affairs Security, military intelligence
SB	Special Branch police
Swanar-shin	'Masters of force', gangs operating under command of local councils
USDA	Union Solidarity & Development Association, government mass body

Note

Some of the cases described here have already had verdicts handed down which are mentioned. In others no verdict is mentioned either because they are still under trial or because at time of writing additional full details were not available on the verdict. Appeal numbers refer to Urgent Appeals of the AHRC, Hong Kong.

during the military-led crackdown on protestors. They searched her and although she only had her ID cards, a small amount of money and some personal items, they tied her hands behind her back and took her to the town hall.

At the town hall, she was put together with ten men who were unknown to her and then they were each photographed with various weapons, including knives, slingshots and pellets. Then they were allegedly forced to sign confessions that the weapons had been found in their bags. When Khin Sanda Win refused to sign, one of the men in plain clothes hit her on the head with a bamboo rod.

That night, Khin Sanda Win was sent to a special interrogation centre and she was kept there without charge, warrant or otherwise until October 7, when she was transferred to the central prison and held there, again without charge, warrant or any other legal order until October 25.

Khin Sanda Win

On October 25, Khin Sanda Win was sent to the Hlaing Township Peace and Development Council office where in the presence of the council chairman and her parents she was told to sign a pledge that she would not take part in any anti-state activities, after which she was released. Many persons released after having taken part in the protests were first forced to sign these pledges, which have no basis in law, as proven by what happened to Khin Sanda Win, and are anyhow so vague a to be meaningless, requiring signatories to promise that they will not again commit undefined offences.

Although it seemed like Khin Sanda Win's ordeal was over, it was not. On November 1 two police officers came to her house and informed her that she would be charged with having illegal arms, although the "arms" they claimed to have found were a slingshot and some pellets, which do not violate the law.

But when Khin Sanda Win went to court the next day, the charge that the court put against her was not as the police had indicated but instead, acting "to endanger human life or the personal safety of others".

Penal Code

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to one year...

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence...

This is a charge for which the accused can get bail. But when her lawyer applied, the judge set bail at five million kyat (USD 4000) from two separate bailors. In fact, this amount was far more than the amount that the judge could legally set, which is three million kyat (USD 2400) from a single bailor.

Then, on November 12 the judge, without any request from the police, revoked the bail on the absurd grounds of Khin Sanda Win being a threat to security forces personnel because the charge against her relates to the "disturbances" of September.

Khin Sanda Win's lawyer unsuccessfully appealed at the subdivisional and divisional courts to have her released on bail on health and legal grounds.

The following are just a few of the glaring violations of criminal law, criminal procedure and human rights in this case:

1. The persons who took Khin Sanda Win into custody did not indicate at any time that they were state officials and there were no grounds for arrest by a private citizen as provided by section 59 of the CrPC.

2. The persons searched her in violation of section 52 of the CrPC that a woman should search another woman, and also tied her hands in violation of section 50 that no more restraint than necessary should be applied to prevent escape.

3. While in custody at the town hall, Khin Sanda Win was allegedly coerced to sign a fake confession and was assaulted.

4. Khin Sanda Win was first held without charge for a total of 26 days, in violation of CrPC section 61, which limits detention without charge to 24 hours, and she was denied access to a lawyer and her family. In order to be released she had to sign a document which has no legal authority.

5. Assistant Judge U Thaung Lwin exceeded the maximum amount at which he could set bail in the first instance and then without justification withdrew the bail order altogether.

Criminal Procedure Code

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

59 (1) Any private person may arrest any person who in his view commits a non-bailable and cognizable offence... and without unnecessary delay shall make over any person so arrested to a police officer, or... to the nearest police station.

60. A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before the officer in charge of a police station.

61. No police officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not... exceed twenty-four hours...

In a lawless land, any law will do

Awzar Thi, Jurist Hotline, 6 March 2008

Human rights advocates, lawyers and journalists are often concerned with how special laws are used to suppress dissent and deny basic freedoms in countries around the world. Internal security acts and emergency decrees attract widespread interest and strong critiques. How ordinary laws are used to the same ends often obtains less notice. And yet it is in the workings of mundane codes and procedures that the efforts of governments to control the largest numbers of their citizens are brought into sharpest focus.

Burma is a case in point. Democracy campaigners have long described it as having some of the most draconian and sweeping security laws in the world. Now a lawyer has said that around 20 detainees are likely to be charged under one of these. The persons, held since last August, are expected to face charges under law 5/96 for "acts such as incitement, delivering speeches, making oral and written statements and disseminating in various ways [sic] to belittle the National Convention" on a new constitution.

...

Among those still inside, including dozens of defrocked monks and nuns, few have been charged under security laws. Most have been accused of ordinary crimes: insulting religion; keeping obscene materials or illegal videos; gambling, carrying weapons. And if one charge doesn't stick, there's sure to be another.

The imprisonment of Khin Sanda Win, a 23-year-old university student, is indicative. She was stopped by unknown men on September 29 and taken to the town hall in Rangoon where she was photographed standing behind some arms on a table, with a group of other people whom she had never met. Then she was put inside. Law never even entered into it.

At the end of October, Khin Sanda Win was let out after signing a pledge, but shortly thereafter police came to her house and said that she would be charged after all, for allegedly having a slingshot in her bag when she was picked up. Apparently the officers had not realised that possessing a slingshot is not prohibited.

When Khin Sanda Win came to court she was instead accused of endangering life. The judge granted bail at an amount that exceeded what was legally permissible, and then without reason unilaterally retracted it. She has since been held in solitary confinement at the central prison and attempts to get her released have been singularly unsuccessful.

Such cases are nothing new to Burma. Officials large and small routinely lay run-of-the-mill charges against perceived troublemakers or personal enemies. Cases for upsetting the peace, interfering with public servants and lodging false complaints are commonplace. Other targets are accused of apparently unrelated crimes, such as trading in illegal lottery tickets or tutoring without a licence. Judges have been known to advise inept prosecutors on charges with which to secure a guilty verdict.

In this setting talk only about specialised security laws and high-profile dissidents holds little value. When a country's entire criminal legal system has been reduced to a means to other ends, trying to make sense of one particularly nasty provision or an especially ugly case is pointless. Instead, real effort is needed to understand and describe the whole; to identify those features that a single case has in common with others rather than those that may distinguish it from the rest...

2. Ko Thiha: Twenty-two years for some photocopies

ACCUSED	*Ko Thiha, 34, traditional medicine practitioner; member of the Human Rights Defenders and Promoters (HRDP) group and National League for Democracy (NLD) youth wing member*
ARREST	*7 September 2007*
CUSTODY	*Kyaikkasan, 29 September to 7 October; Insein Prison, 7-25 October and 12 November onwards*
CHARGES	*124A/ 505(b), Penal Code, brought by Police Captain Win Myint, SB*
TRIAL	*Mandalay District Court Criminal Case No. 134/ 2007, Judge Win Htay presiding*
SENTENCE	*One life term (20 years) and two years rigorous imprisonment, to be served consecutively, given on 17 September 2007*
ISSUES	*Arrested for having some publications linked to protests, wrongly charged, no lawyer, no defence witnesses, one-day closed trial, forged confession read out as evidence*
APPEAL NO.	*AHRC-UAC-052-2008*

On 7 September 2007, a man named Soe Khaing Win left four publications at a photocopy shop in Mandalay. The publications, which had titles like "The people awake! Time to take to the streets", were described as "inflammatory" and "anti-government". Later, two others, Ye Min Zaw and Ko Thiha, came to collect them. Thereafter, the police went looking for the three; however, the first two were able to evade arrest. They only captured 34-year-old Ko Thiha that night when he was south of Mandalay, near the town of Wundwin, on the road to his hometown of Meikhtila.

The police brought Thiha to the district court in Mandalay on September 14 and charged him with sedition and upsetting public tranquillity, despite the fact that the case against him should have been opened in the court in Wundwin, where he was arrested, not in Mandalay.

The trial was held at a special court inside the Mandalay Prison. Thiha did not have a lawyer to represent him, even though he was facing a life sentence. He was not able to call any witnesses or defend himself in court. Meanwhile, the witnesses that the police called were not the ones present when Thiha was actually arrested. The police did not present any evidence to strongly support the charge of sedition and instead called another judge who briefly testified that Thiha had made a confession before him, which was presented as evidence. However, Thiha claims to have never seen that judge before the trial.

Ko Thiha

The hearings were all completed in a single day, and on September 17 after only ten days of investigation and trial the presiding judge sentenced Thiha to 22 years in prison. He ordered warrants of arrest for the other two accused. Thiha was sent to the central prison.

The following are just a few of the glaring violations of criminal law, criminal procedure and human rights in this case:

Penal Code

124A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, bring to attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards [the Government established by law for the Union or for the constituent units thereof,] shall be punished with transportation for life or a shorter term...

505. Whoever makes, publishes or circulates any statement, rumour or report... (b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility... shall be punished with imprisonment which may extend to two years, or with fine, or with both.

1. The case should have been lodged in the Wundwin Township Court and then transferred to the Mandalay District Court (177, 178, CrPC), but it was opened directly in Mandalay.

2. Ko Thiha was not able to hire a lawyer as is his right, nor make a proper defence (340, CrPC, Judiciary Law 2000 section 2[f]).

3. Ko Thiha was not able to call witnesses as his case was tried in a closed court within Mandalay Prison, in violation of the Judiciary Law (section 2[e]) and the CrPC (352).

4. None of the witnesses brought to court by the police, including the police, were present when Ko Thiha was arrested.

5. The prosecutor called Batheingyi Township Judge, U Mya Sein, to testify that he had taken a confession from the accused (Evidence Act, section 26). However, according to Ko Thiha he had never seen that judge before he came to the court.

The court also compounded the penalties for the two offences rather than allowing them to be served consecutively.

Criminal Procedure Code

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

340(a) Any person accused of an offence before a criminal Court... may of right be defended by a pleader.

352. The place in which any criminal Court is held for the purpose of inquiring into or trying an offence shall be deemed an open Court, to which the public generally may have access...

Judiciary Law 2000

2. The administration of justice shall be based upon the following principles:

(e) dispensing justice in open court unless otherwise prohibited by law;

(f) guaranteeing in all cases the right of defence and the right of appeal under the law...

Ko Thiha may have been targeted in part because he is a member of the HRDP group. In the December 2007 *article 2* special report ('Burma, political psychosis and legal dementia', vol. 6, no. 5-6) the cases against other members of that group, the 'Hinthada 6', were documented and discussed, and other members of the group also have been imprisoned before and since the September protests. The chairman of the group also has now been detained over relief work for victims of Cyclone Nargis and, incredulously, accused of terrorist offences (see 'Nargis: World's worst response to a natural disaster' in this edition.)

According to a report by Democratic Voice of Burma radio in November 2007, unidentified Special Branch police in Meikhtila also called and interrogated Ko Thiha's seven-months-pregnant wife, Ma The The, on suspicions that she was also involved in anti-government activities. They took a statement from her and also photographed her before allowing her to go home.

3. Ma Honey Oo: A 'reliable source' said she did something

ACCUSED	*Ma Honey Oo, 21, final year law student*
ARREST	*9 October 2007*
CUSTODY	*Insein Prison*
CHARGES	*124A/ 143, Penal Code, Organisation Law No. 6/ 88, brought by Sub-Inspector Soe Moe Aung, Police No. La/ 134172, Tamwe police*
TRIAL	*Rangoon Eastern District Court Felony Case Nos. 30/ 2008 and 31/ 2008, Daw Aye Thein, Deputy District Judge (1), Judge No. Ta/ 1724, presiding*
ISSUES	*Illegally held without charge, torture, forced confession, evidence-less case, contradictory witness testimonies, use of numerous incorrect procedures*
APPEAL NO.	*AHRC-UAC-083-2008*

Ma Honey Oo is accused of having had contact with overseas radio stations to give out information at the time of the protests, and having been involved in forming a student union. She was taken into custody on 9 October 2007 but was not brought before a court until December 20; during those more than two months she was held illegally without charge at the central prison.

The police have accused Honey Oo of having been involved in a student union, having talked to foreign media by telephone and of having participated in protests at the Yuzana Plaza and on the road from Mingalar Market to Natmauk on 25-6 September 2007. However, when pressed in court they could not produce any evidence to support any of their claims and on the contrary showed ignorance and confusion about the laws under which she had been charged.

The investigating detective, Sub-Inspector Soe Moe Aung, under cross-examination said that the information they had that Honey Oo was part of the group accused of having contact with overseas media was from a reliable source, but he could not divulge the source to the court and the source was not included among the list of witnesses in the case. He had no evidence to

present to the court other than the supposed confession of the accused. Nor could he produce any photographs or other evidence that Honey Oo was in the protests as claimed in the charges against her, saying only that eyewitnesses had seen her, although he acknowledged that it was the responsibility of the police to take photographs and bring enough evidence with which to support the case. On the other hand, among the "evidence" presented against Honey Oo was that she had gone for English lessons at the American Center library, about which the defence lawyer asked if it was a crime to learn English; the officer replied that he just collected and gave information about her and it wasn't for him to decide if it was relevant or not. Finally, on the charge of sedition, the defence lawyer pointed out to the policeman that there was nothing in the case brought against his client that could meet the elements of this charge and at most she could be charged with obstructing a public thoroughfare. Sub-Inspector Soe Moe Aung replied that the protests included seditious behaviour but when asked to explain the section to the court he admitted that he could not.

Ma Honey Oo

The chief of the Tamwe Township police, Inspector Hla Thein (Police No. La/155953) said that on December 10 he received four interrogation records of Honey Oo from Sub-Inspector Hla Htun, SB, which he submitted to the court as evidence. When the defence lawyer asked him if he knew that the accused had been interrogated "under duress" the police chief denied it, but when the lawyer challenged him, he admitted that he didn't actually know how she had been interrogated. The lawyer also asked the officer if he didn't know that Honey Oo was taking an exam on September 25 and couldn't have been on the road waving a flag as the eyewitnesses had purportedly said. Inspector Hla Thein replied that he didn't know this but maybe she had gone before she went to the exam, although he also didn't know what time she might have had the exam. When told by the lawyer that the time of the exam was the same as she was supposed to have been on the road and therefore the eyewitnesses must be lying, the police chief denied it and said that it must just be a matter of not being able to identify the time of her involvement in the protests exactly. The chief also claimed fantastic ignorance of basic criminal procedure, denying knowledge that the Evidence Act prohibits forced confession and also that he is supposed to keep a record of any investigation in his station's Daily Diary, not in a personal book as he said he did. Finally, coming back to

the submitting of the confessions to the court, the defence lawyer asked the police chief if he knew that they were inadmissible, to which the inspector replied that "in some cases they can" but asked to explain to the court which cases these would be he admitted that he was unable to do so.

Importantly, Honey Oo was first detained on 9 October 2007; however, she was not put in remand until December 20, during which time she was held in Building 3 of Insein Prison without charge. When the defence lawyer asked the police chief about this, he simply said that he was not involved in the case for the period of alleged illegal detention, but denied anyhow that it had been illegal. The lawyer observed though, and the policeman agreed, that she had not been charged until December 17, so that when the lawyer asked the officer to confirm that Honey Oo was arrested and held for over two months before the case was opened, he replied, "I don't know."

At the same time that the case was brought against Honey Oo another under section 124A was brought against a 20-year-old man named Aung Min Naing, who was detained on September 7 and accused of joining around 50 persons on August 23 and going to Tamwe Plaza and the road in front of the Tamwe Temporary Market and Kyaukmyaung Market and marching in protest at the fuel price hikes, for which he was also held for over three months without remand and charged with sedition by the same police as in Honey Oo's case. Again they laid the charge apparently without properly understanding it, Sub-Inspector Soe Moe Aung admitting that the decision to lay this charge had nothing to do with him and that it was "under instructions" from somewhere and someone else. He also acknowledged that he didn't know whether or not there is even a law for obtaining a permit to rally on the road. Again, neither he nor Inspector Hla Thein had any evidence to present to the court at all, and the inspector inadvertently denied having made an illegal arrest without the defence lawyer even asking him about this. Again, the police had presented an inadmissible confession to the court, allegedly obtained through torture, which they denied. Finally, in response to the lawyer's question about whether the policeman understood or not that in the absence of other evidence witness testimonies alone do not constitute a strong case, the officer replied, "That's not so."

Penal Code

143. Whoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months...

4. U Ohn Than: Inequality before the law

U Ohn Than, 60	***ACCUSED***
By persons in plain clothes, after 1pm, 23 August 2007 outside then Embassy of the United States of America, Kyauktada Township, Rangoon	***ARREST***
Kyaikkasan, then Insein Prison	***CUSTODY***
124A, Penal Code, brought by Inspector Soe Naing (Kyauktada), Police No. La/147569	***CHARGES***
Rangoon Western District Court (Special Court), Felony No. 12/2008, Judge U Kyaw Swe, Deputy District Judge No. 3, Judge No. Ta/1867, presiding	***TRIAL***
Life imprisonment	***SENTENCE***
Illegally arrested, held at special military camp, tried in a closed court amid multiple other procedural irregularities	***ISSUES***
AHRC-UAC-131-2008	***APPEAL NO.***

U Ohn Than had joined a number of earlier protests against price rises but had been released after being interrogated.

On August 23 however, he went by himself to the front of the then-US embassy in downtown Rangoon and held a placard with a series of points written on each side. On one, he called among other things for the UN secretary general to intervene and support the people's will for the restoring of parliament. On the other, he called on soldiers to uphold the armed forces' dignity and defy the orders of their superiors in order to bring an end to dictatorship. He was taken away in a small public vehicle shortly thereafter.

U Ohn Than's protest

Like other protestors, Ohn Than was not arrested according to any law. After being bundled away in a vehicle by men in plain clothes, he was kept in a special military interrogation camp until the end of January when his case was finally brought into a special closed court in accordance with an order from the Supreme Court concerning cases arising from the 2007 protests.

Of the nine witnesses who appeared for the prosecution seven were police and local officials. The other two identified themselves as belonging to the Swanar-shin gangs and under cross-examination one of them admitted that he was assigned by the local council to "render assistance" as necessary. Both of them said that they were working with the local police.

In his defence, Ohn Than said that he had acted out of concern for the nation after the price rises and fear that there could be another bloodbath like in 1988. He also pointed out that there had been protests twice earlier in the year with groups of a hundred or so persons in the same place but no one had ever been charged from these: in fact, he was referring to the government-sponsored "demonstrations" outside the embassy against foreign interference in the country. He said that if these people were not charged and sentenced, then nor should he.

The judge asked Ohn Than if he was acting on behalf of anyone else and he replied firmly that he protested on his own to represent the true wishes of the people. But the judge concluded that standing alone at a busy place in front of a foreign embassy with a placard was an act of sedition and sentenced Ohn Than to life imprisonment on 2 April 2008.

After his conviction Ohn Than was transferred to the Khanti Prison in Sagaing Division, upper Burma, apparently in order to isolate him from his family and other persons inside the prison whom he might know. At last report he had been suffering from malaria and there were serious concerns about his health.

The following are just a few of the glaring violations of criminal law, criminal procedure and human rights in this case:

1. None of the men who snatched U Ohn Than and threw him into a vehicle were in uniform or identified themselves, and they took him to Kyaikkasan instead of a police station as required.

2. U Ohn Than was not kept in a police station or for a period of less than 24 hours (CrPC section 61). He was held at Kyaikkasan without reference to any law and a case was not filed against him in court until 30 January 2008. Thus he was held incognito in illegal detention for 160 days before the case was filed.

3. The criminal trial of U Ohn Than was held in a closed court in violation of the Judiciary Law 2000. A question by the accused to a police officer about whether or not groups of persons who had on and before 12 February 2007 protested outside the embassy had also been arrested and charged was declared inadmissible, despite the obvious connection and the clear point that the accused was trying to make about the double standards in the treatment of himself versus those other persons.

No show trials for Burma's protestors

Awzar Thi, UPI Asia Online, June 19, 2008

Nearly a week ago, the Asian Human Rights Commission issued an appeal on behalf of U Ohn Than, who is imprisoned in Khanti in upper Burma. The 60-year-old was among the few who protested last August against the government's unannounced dramatic increase in fuel prices, precipitating the historic monk-led revolt in September.

Ohn Than went out alone, standing opposite the U.S. Embassy in the center of Rangoon with a placard that called for United Nations' intervention and pleaded for the armed forces and police to join in efforts to topple the junta.

His protest did not last long. Within a few minutes an unidentified vehicle pulled up and a group of men threw him inside and drove away. For the public, that was it. For Ohn Than, it was only the beginning.

Ohn Than was not taken to a police station, as required by Burma's criminal procedure code, but to a special army barracks that was used to house thousands, similarly detained without charge or procedure, in the coming days and weeks. He was kept there, a non-detainee in a non-prison.

Several months later, at the end of January, Ohn Than was finally charged with sedition, which requires that the prosecutor prove that Ohn Than had provoked "hatred or contempt" for the government, or had attempted to "excite disaffection" toward it.

Under other circumstances, this may be a difficult task, but Ohn Than was tried in a closed court, unable to present witnesses, and was denied a lawyer, making the prosecutor's job less onerous.

Still, Ohn Than did his best to argue a case, cross-examining nine witnesses, all of them state officials and government thugs, and asking questions that were consequently struck from the record when the judge found them impertinent.

In his defense, Ohn Than said that he had not intended to incite hatred toward the state and pointed out that the wording of his silently-held placard was simply calling for democracy instead of dictatorship, and for the armed forces to uphold their dignity by siding with the people.

He also noted that a government-backed group had held a rally near the same spot in February. None of the hundred or so that had gathered had been charged with any offence. He had assumed that he had the right to do as they did.

In the end, it seemed Ohn Than's words were of no import. The judge skipped lightly over the facts and handed down the required sentence.

Dictators have long relied upon pliable judiciaries to deal with political opponents or former allies, and in this respect Burmese courts are unremarkable. Still, whereas in many countries the courts have been used for rehearsed public performances of justice, it is not the case in Burma.

In Moscow, show trials under Stalin were highly scripted; in Beijing, the Gang of Four trial was an important part of a public and political catharsis. In each case, the performances were paramount. The law mattered little.

What is striking about the trials in Burma today is that neither the performance nor the law matters. They go on without fanfare or outside interest for no purpose other than the illegal imprisonment of persons who were already illegally imprisoned, without anyone to witness their parodies of justice other than the performers themselves...

5. Ko Htin Kyaw: Seditious appeal to keep commodity prices down

ACCUSED	*Ko Htin Kyaw (a.k.a. Ko Kyaw Htin), 44*
ARREST	*By persons in plain clothes, outside Maha Theindawgyi Monastery, Papedan Township, around 1pm on 25 August 2007*
CUSTODY	*Kyaikkasan, then Insein Prison*
CHARGES	*124A, Penal Code, brought by Police Captain Myint Swe, Police No. La/59314, Papedan police*
TRIAL	*Rangoon Western District Court (Special Court), Felony No. 16/2008, Judge U Htay Win, Deputy District Judge No. 5, presiding*
ISSUES	*Illegally arrested, held at special military camp, tried in a closed court amid multiple other procedural irregularities*
APPEAL NO.	*AHRC-UAC-146-2008*

Ko Htin Kyaw was among the first persons to protest against the August 15 price rises in fuel that provoked the nationwide uprising in September 2007. He and another person, Ko Zaw Nyunt, came onto the street outside the Maha Theindawgyi Monastery in Papedan Township with a placard calling for no increase to fuel prices at around 1pm on 25 August 2007. Shortly afterwards men in plain clothes came and grabbed them and threw them into an unmarked vehicle before driving them away. The "arrest" occurred without any uniformed police officers being present even though the Pansodan Township Police Station is only a short distance from where the incident occurred.

As in other cases, although Htin Kyaw and Zaw Nyunt should have been taken to a police station and then to a court within 24 hours as per the Criminal Procedure Code, they were taken to Kyaikkasan. Zaw Nyunt was released after some weeks, during which time his whereabouts were unknown to friends and relatives and government officials denied having him in custody. Htin Kyaw, however, was transferred to the Thanlyin (Syriam) Police Battalion No. 7. The Papedan Township Police did not lodge the sedition charge in court until 6 February 2008, and did not even bring his case to the notice of a court until 11 November 2007. Thus he was kept in illegal custody for 165 days.

When Htin Kyaw was at last brought to court he was charged with sedition, which requires proof that the accused person had "excited disaffection" or hatred towards the state. However, all of the evidence that has been brought against him shows only that he called for the lowering of commodities prices, as on previous occasions, and did not say or do anything to malign the government itself.

The police laid the charges on the accusation that the two men made the protest "against the state government as well as law and order" and that Htin Kyaw had in February 2007 led a small protest against increasing price rises in Burma "in the manner of a riot". He had been detained and investigated that time but released after six days. However, the allegations of a crime committed on that occasion were included against him in the charges arising from the protest in August.

In his testimony and cross-examination, Police Captain Myint Swe fantastically tried to deny that he knew anything about the vastly increased price of natural gas on August 15. He admitted that he had noticed crowding at bus stops that morning, but he apparently does not take the bus as he denied knowledge that the cost of public transport travel had also increased. He knew, he said, that the government has a monopoly on sales of natural gas, or CNG, but refused to acknowledge that the government alone could solve the problem of overly high fuel prices. He admitted that there had been no damage to public property at the two protests where Htin Kyaw had been involved, but insisted that there could have been if other people had kept gathering. Finally, when the defence lawyer put it to him that there was nothing written or done to amount to a charge of sedition against the state, he said the placard with the words "Don't raise commodity prices" was sufficient.

Htin Kyaw

In each case Htin Kyaw and the other dozen or so demonstrators had issued demands that were strictly economic and non-political in nature, such as that inflation be brought down, that health and education services be provided for free, and that there be reliable electricity supply. However, as the chief of the Papedan Township police Inspector Kyaw Tint, (Police No. La/112610), denied in court knowing that there is no prohibition on a peaceful demonstration in the Penal Code, it is unsurprising that the rallies were quickly broken up, although not by the police themselves but by groups of plain-clothed thugs under their directions and those of the local councils.

As in other cases arising from the protests, the trial was held behind closed doors, in this case within the prison itself, contrary to the Judiciary Law 2000 and CrPC.

Closed courts, absurd law and the exception as norm

Asian Human Rights Commission statement, AHRC-STM-224-2008, August 29, 2008

On the eve of the anniversary of the massive nationwide protests that swept Burma last September 2007, a steady stream of cases against persons wrongfully arrested, detained and charged for their involvement in the rallies continues to pass through the courts. The accused include civilians as well as former monks who have been stripped of their robes. In recent weeks they have also been joined by persons who have been charged for giving relief to the May cyclone victims without proper government approval and for speaking to the media about what they had seen.

The Asian Human Rights Commission has been following and studying many of these cases closely and has issued appeals on a number of them over the last few months. Apart from the patently illegal manner of arrest and procedure in laying charges and bringing cases to the courts, one of their striking features is that they are being held behind closed doors: in special criminal courts and sometimes inside the prison itself.

The holding of closed trials violates one of the fundamental provisions of the country's 2000 Judiciary Law, that of "dispensing justice in open court unless otherwise prohibited by law". The same principle has been laid down in the new constitution of 2008, which has been in effect since the end of May. According to the Judiciary Law, open court is the norm and closed court is the exception. But like so many other things in Burma today, in these cases it is the exception that has been made the norm, and absurd law that has been made supreme.

Advocates for defendants from last September's protests, who have been charged with disturbing public tranquility, sedition, upsetting religious harmony and a variety of other absurd offences, have submitted to presiding judges that the hearings should be held in public as the law dictates. However, according to the records obtained by the AHRC, they have been told that under a Supreme Court Order, No. 16/2008, the trials are to be held out of view.

What is this Supreme Court order and what is its basis? There is nothing in any law to prohibit the holding of such trials in the open. Nor should there be any possibility of security problems arising from the trials if they are handled properly. Even under the British colonialists the cases of persons charged with sedition and other political offences were heard in open court unless a specific problem presented itself that forced the court to shut itself off. These tribunals were very often hardly exemplars of justice, and yet it seems that the current courts in Burma are not even able to come up to their rather low level.

So why really is it that these persons too cannot have the charges heard against them in public? The only reason that the Asian Human Rights Commission can discern is that the trials are so fraudulent and bankrupted that even for Burma's perverted and dictated judiciary they would be an embarrassment. Police coming to give evidence in these cases acknowledge that they actually know nothing about the facts, and that the investigations were done by combined security forces, meaning army intelligence officers. Other witnesses have included "Swan-arshin" thugs and council officials who carried out many of the so-called arrests rather than police officers, who have openly admitted that they took the accused to army facilities instead of police stations as required by law. What evidence has been presented has consisted of one fabrication on top of the next, one contradiction after another.

It may be too much to expect that these detainees will be readily released and that there will be any prospect for their fundamental rights to be properly acknowledged, but is it really too much to expect that even the absolute minimum standards of trial cannot be met? Does Burma's Supreme Court have nothing to offer other than Stalinist administrative hearings held in places that are described as courts but are devoid of anything that would earn them the name?

The Asian Human Rights Commission hopes for the sake not only of these defendants themselves but for the sake of all persons in Burma, that there is still some prospect of minimum standards being met in these cases. It hopes also that the international community will in dealing with Burma emphasise these minimum standards, and that in particular the United Nations and governments of the Association of South East Asian Nations and other countries in the region will make special appeals to the government of Burma, or Myanmar as it prefers, that these cases be tried in open court in accordance with established domestic law. And finally, it also reiterates its hope that the International Committee of the Red Cross be given full and regular access to these detainees in accordance with its mandate, not in accordance with whatever terms that the government authorities choose to apply to it, so that both legal and physical minimums can be ascertained and protected.

6. Kam Lat Hkoat, Kat Hkant Kwal & Tin Htoo Aung: Just don't ask the police what they did

1. Kam Lat Hkoat a.k.a. Kyaw Soe, 34, merchant *2. Kat Hkant Kwal a.k.a. Kwalpi, 28* *3. Tin Htoo Aung, 27*	***ACCUSED***
29 October 2007	***ARREST***
Insein Prison	***CUSTODY***
17/20, Printers and Publishers Act 1962, 13(1), Immigration Law (Emergency Provisions, Temporary) 1947, 17(1), Illegal Associations Act 1908, brought by Police Captain Myo Thant, Police No. La/127091, SB, Dagon Pier police, but case in fact investigated by Captain Myo Min Latt, Military Affairs Security	***CHARGES***
New Dagon (Southern) Township Court, Felony Nos. 353-355/2008, Judge Daw Htay Htay Win (Special Power) presiding	***TRIAL***
Detained without charge, investigations done by military intelligence officers, tried in a closed court, evidence-less cases and completely ignorant police	***ISSUES***
AHRC-UAC-177-2008	***APPEAL NO.***

Kam Lat Hkoat, Kat Hkant Kwal and Tin Htoo Aung were all arrested on 29 October 2007 and accused of a variety of offences in relation to the events of September, including that they printed and distributed anti-government materials at that time, and that in 2006 they had travelled to Thailand illegally and there met with members of organisations banned in Burma.

However, like other cases from last September and October, the three men were not taken to a police station and then brought before a magistrate as required by the CrPC (section 61). Instead they were held incommunicado and the charges framed and presented against them in court only on 20 January 2008. Thus they were kept in illegal detention in the interrogation cells within the central Insein Prison for 82 days, during which time it is alleged that they were tortured. It was also revealed that the case was in the hands of the MAS and it was only turned over to the police for them to put the case into the court.

Unfortunately, this is only the beginning of illegality and wrongdoing in this case. When the case was brought into the court, it was found that the police officers presenting it have no evidence at all against the accused. They could not name what dates the supposed offences were supposed to have been committed. Other questions they refused to answer on grounds of national security or because they were not authorised. They referred to the case as being investigated by "combined units" but gave no details.

The police, most of who were from Special Branch, which is supposedly an elite unit tasked with covert operations, had no material evidence to show the court to prove any of the allegations. Instead they just read confessions supposedly obtained from the accused, in violation of the Evidence Act (sections 25-26). When the defence lawyer for the three accused asked the police officer reading the confessions if he knew this, he said yes, but that he was following orders.

No evidence please, we're Burmese police

Awzar Thi, UPI Asia Online, August 7, 2008

Almost a year has passed since the day Burma's military regime suddenly upped fuel prices without telling anyone, triggering off a series of small protests that led to some bigger ones, and finally, the really big ones that for a few days in September captured the world's headlines.

No one is any the wiser about the reasons for the price hike, or at least, why it was sprung upon the unsuspected public that particular August morning. Among the theories, a few people caught up in political intrigues have claimed that it was a plan to flush out and grab re-emerging dissidents prior to the referendum on a new Constitution, which was held amid the cyclone ruins in May.

Whether they planned it or not, the authorities did net a large number of opponents in the days, weeks and months after the rallies. Most were kept in illegal custody for further days, weeks and months. Some are still missing, but the cases of many others are now seeping into the courts, and what they reveal is just how far officialdom in Burma has strayed from any notions of legality in dealing with dissent.

Take the case of three men, Kyaw Soe, Kwalpi and Tin Htoo Aung, detained at the end of October. The three were taken to the torture chambers at the central prison, where they were left in the hands of MAS officers until the middle of January. Only then were they handed over to the police, whereupon their case was registered in court.

The men were charged with a number of crimes for supposedly having had contact with illegal groups outside the country and having distributed anti-government pamphlets at the time of the protests.

So far there is nothing striking about any of this. Sadly, illegal imprisonment, torture and heavy criminal charges are typical to the cases from last September. What is more interesting is that despite all that, the police had nothing to show for it when they brought the case into the court. Nor did they care.

Speaking at the hearings in March, the Special Branch officer in charge of the case admitted that he could not say on exactly what day, or even what month, the alleged crimes had been committed.

Another, this time from the Criminal Investigation Division, said that his unit had looked into the case together with other agencies, but when asked to give details said that he wasn't authorized. He could not give the exact date that he had interrogated one of the defendants. He had not sought to get approval to bring the material evidence in support of the case to the courtroom. And so on.

Then the defense lawyer turned to the matter of a confession that was said to have been obtained from an accused while in custody, which the policeman had read out during trial.

The witness, he noted in questioning, had been in the service for over 25 years. He was a seasoned officer, an inspector. He knew that a confession to a police officer is not admissible to the court. So why did he read it anyway?

"My testimony is a duty assigned to me from above," the inspector frankly replied.

There's the nub. These police officers, middle ranked, from specialized units, were the dummies sent to do the dirty work of others. Not only did they not have anything to offer, they didn't bother to hide it. Whereas in Thailand or Bangladesh the police would at least do some work to fabricate a case for the sake of the court, in Burma even that much is unnecessary.

In this lies the difference between a damaged criminal justice system and a defeated one. While in Bangladesh or Thailand the courts need a small performance to convict an accused, in Burma the responsibility to fabricate ultimately lies with the judge herself. Her judgment too is a duty assigned from above.

...

Hence the case lodged against Kyaw Soe and the other two, and the disregard with which the police treated the court in which they are being tried, and the criminal case that is supposed to have been built against them. The law books may overflow with standards of evidence, about facts, relevance and the burden of proof, but what are these frauds when compared to the duty from above? That duty beats them all, and it will beat Kyaw Soe and his friends too.

Basically the same thing happened to the next three defendants brought in the very next case before the same judge in the same court by the same police officer. Kyaw Win Chay (28, a contractor), Maung Maung Than Shwe (24, student) and Aung Hsun Min (45, private telephone operator) were accused of hiding a monk involved in last year's protests, having been arrested at the end of October but not charged under section 212 of the Penal Code until 20 January 2008 (New Dagon [Southern] Township Court Felony No. 356/2008; AHRC-UAC-188-2008). As in the preceding cases, the investigation had supposedly been conducted by "combined units" but these units apparently did not include the police who presented the case to the court, as they could not say what offences the monk whom the three are supposed to have harboured had himself committed, other than having been a part of the rallies in which tens of thousands of monks and people took part, or give evidence of the fact that he had stayed with the accused or that they knew that he was in hiding, since he was by then wearing ordinary civilian clothes to conceal his identity and there was no warrant of arrest out against him upon which the accused could be said to know that he was a fugitive. Inspector Hsan Lwin (Police No. La/93286, SB) freely admitted that he did not himself examine the accused and had come to the court simply because he had been ordered to testify by a superior whose name he was not at liberty to tell the court. He acknowledged that there was no evidence that the monk had actually been harboured by the accused, or that if they had housed him they had known that he was a monk fleeing from the protests. He did not know what charges had been laid against the monk either, only that there was no warrant out against him at the time that the accused had allegedly harboured him.

Penal Code

212. Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years...

7. Sithu Maung & 6 Others: Complain about your university, go to jail

ACCUSED	*1. Sithu Maung, 21* *2. Thein Swe a.k.a. Min Soe, 40* *3. Myo Thant a.k.a. Jonathan, 41* *4. Ye Min Oo a.k.a. Kalarlay, 23* *5. Ye Myat Hein a.k.a. Ko Ye, 18* *6. Kyi Phyu, 30* *7. Zin Lin Aung a.k.a. Rakhine, 18*
ARREST	*9-10 October 2007*
CUSTODY	*Insein Prison*
CHARGES	*124A, Penal Code, brought by Inspector Kyaw Thar Oo (Police No. La/150368), Police Chief, Bahan police*
TRIAL	*Rangoon Western District Court (Special Court), Felony No. 8/2008, Judge Myint Soe, Deputy District Judge No. 6, presiding*
ISSUES	*Detained without charge, torture, trial in a closed court, evidence-less case*

Sithu Maung and six others who were accused of sedition were all arrested around 9 and 10 October 2007 out of 18 persons in total. Special Branch officers investigated and on December 11 transferred the case to regular police. During this time the seven were held without charge or access to lawyers and without being brought to a court as required by the CrPC.

The case was not lodged in court until December 18 and it was only at that time that Sithu Maung and the others were remanded in custody according to the law; they were thus illegally detained for around 68 days.

Sithu Maung

One of the defence lawyers also asked the court to allow the case to be heard in an open court but this was refused. It is being heard in a special closed court nearby the central prison, contrary to the CrPC and Judiciary Law 2000.

According to the police, the group were responsible for provoking people in Bahan Township of Rangoon to join the protests and upset law and order, and that they had exhorted the public to commit crimes. However, when the case came into the court in February 2008 the police did not present any firm evidence to support the charges or show that there was cause for the case to be one of sedition. Rather, the nature of the allegations was that the accused had engaged in arranging speeches, distributing documents and presenting information about insufficient teaching materials in universities, insufficient vehicles for transport of students to and from campuses, and that the universities are dilapidated. According to the police all of this was done not because this is in fact the real condition

of the universities, but in order to excite disaffection against the government. Furthermore, the police could not bring evidence to back up their allegations, not even copies of pamphlets and photographs. Among the witnesses for the prosecution were mostly police, and two civilians who were apparently coerced.

At the end of the examination of Inspector Kyaw Thar Oo one of the defence attorneys accused the police of torturing his client, Ye Myat Hein. The officer denied this and said that the investigation was "in accordance with the law".

Closed courts and more mocking of justice

Asian Human Rights Commission statement, AHRC-STM-077-2008, March 24, 2008

In one of his two latest reports to the UN Human Rights Council, the Special Rapporteur on Myanmar (Burma) has written that:

> The Special Rapporteur is seriously concerned at the continued misuse of the legal system [in Burma] which denies the rule of law and represents a major obstacle to securing the effective and meaningful exercise of fundamental freedoms. The Special Rapporteur regrets to observe that the lack of independence of the judiciary has provided a 'legal' basis for abuses of power, arbitrary decision-making and the examination of those responsible for serious human rights violations.

This "legal" basis for abuses has become even more exacerbated in the months since the crackdown on the nationwide uprising of last August and September. The AHRC has in recent weeks issued urgent appeals on a number of cases of special concern relating to those events, including the arbitrary detention of Khin Sanda Win and Ko Thiha.

Among the other cases that it is following closely is the case of Sithu Maung and six others, which is currently going before what can only be very loosely described as a court in Rangoon. Sithu Maung (21), Thein Swe (40), Myo Thant (41), Ye Min Oo (23), Ye Myat Hein (18), Kyi Phyu (30) and Zin Linn Aung (18) have—like Ko Thiha—been charged with sedition for allegedly inciting the events of last year.

Like Ko Thiha and a string of other persons accused of crimes that purportedly threaten the military regime in Burma, these seven men are being tried in a closed court within prison confines, contrary to the principle of open court established under both domestic as well as international law.

Under the latter, it is upheld by article 14 of the International Covenant on Civil and Political Rights, whereby, "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law..."

Although Burma has never joined the treaty, even under Burma's own standards, the 2000 Judiciary Law provides in section 2(e) that, "The administration of justice shall be based upon... dispensing justice in open court unless otherwise prohibited by law".

There are good reasons for this principle. Above all, judicial accountability depends upon outside scrutiny. Where things go on behind closed doors in prisons, there is no justice but only its mockery. Where justice is mocked, the courts are ridiculed; judges lampoon themselves. Unfortunately, such courts of burlesque are typical of Burma today.

The charge of sedition carries a life sentence. Those accused of it deserve the right to defend themselves, in view of the public: a right that even in Burma exists in principle. The Asian Human Rights Commission thus calls for the case of Sithu Maung and his co-defendants should be transferred to a court where anyone can hear it, and asks that if even this much cannot be done, why bother holding it at all?

8. Win Maw: Sent 'false' news abroad about a national uprising

ACCUSED	*Win Maw, a.k.a. Maw Gyi, 46*
ARREST	*27 November 2007*
CUSTODY	*Insein Prison*
CHARGES	*505(b), Penal Code, brought by Inspector Police Major Ye Nyunt (Police No. La/58188), Special Branch*
TRIAL	*Mingalar-taungnyunt Township Court, Felony Case No. 313/2008, Judge U Tin Latt (Special Power), presiding*
ISSUES	*Detained without evidence and with police-arranged witnesses*
APPEAL NO.	*AHRC-UAC-200-2008*

Win Maw was arrested and charged by Special Branch police with having upset public tranquility because during the August and September protests he sent news by phone and email and took photographs for the Norway-based Democratic Voice of Burma (DVB) radio, together with an assistant.

Win Maw, who was imprisoned previously for seven years under emergency regulations from 1996 to 2002 for performing as lead guitarist in a rock group, has been accused of sending false news abroad in order to damage the public well-being. The reason that the police have accused him of this offence is that it is not illegal for a person in Burma to have contact with overseas media, so by Win Maw sending the news to DVB he was not doing anything wrong: only if the police accuse him of sending false news with intent to harm the public can they try to make a case out of nothing.

The case opened against Win Maw on 28 March 2008 in a closed court, like other cases from the protests of last year, which is against the normal procedure of courts in Burma. Again as in other cases of its type from last year, the police couldn't present anything to show that Win Maw had been sending the news in order to do what they said he had done.

The police gave a list of "evidence" to the court that includes legally-published books owned by Win Maw's father and bearing his signature, some photos of democracy leader Daw Aung San Suu Kyi, which also are not illegal, and a computer hard disk. If Win Maw had prepared anything against the law as accused, the police should have been able to find it on the hard disk and present it as evidence, but they have not. Only the disk itself has been submitted as evidence. Also, what they recorded on the evidence list as 18 "political" texts they admitted in the court are actually just English learners from the American Center in Rangoon where Win Maw had gone to study.

Of the eight witnesses listed for the prosecution in the case against Win Maw, six are all Special Branch police, including Police Major Ye Nyunt. The other two are civilians identified as Maung Maung Than Htay and U Zaw Thura, who were witnesses to the search as required by the Criminal Procedure Code (section

103). The purpose of having the two witnesses is so that there are independent observers to the actions of the police, so that later if there were any confusion about what had occurred then they could be called to testify and verify facts to a court. However, in the perverted legal setting of Burma this purpose has been completely lost. Instead, Police Major Ye Nyunt has been using the same two "witnesses" for repeated cases.

Win Maw

Similarly, Police Major Ye Nyunt has also charged 39-year-old Zaw Min (a.k.a. Paung Paung) under section 505(b) with having had contact with Win Maw and sent 'false news' abroad (Felony Case No. 112/2008 Sanchaung Township Court, Judge Daw Than Htay, Assistant Township Judge, No. Ta/2043 presiding). The list of prosecution witnesses in his case consists only of four Special Branch officers, including the officer bringing the case. As in Win Maw's case there is no evidence to match the elements of the charge against the accused, and in fact no evidence at all: the police allege that they had arrested Zaw Min in possession of a memory stick with photographs on it but they could not produce the said memory stick in court. Nor could they produce documents in court to show that he had produced any false news. The absence of evidence can be partly explained by the fact that as in other cases of its sort, the police were not actually the ones to have made the arrest of the accused. Rather, it was the MAS who took him and then gave the case to the police with instructions on how to prosecute it. The army also held and interrogated Zaw Min before transferring him to the police, which is against the law. The police also presented a confession to the court obtained from Zaw Min while he was in custody, probably through the use of torture, and read it to the court in order to "refresh his memory", which violates the Evidence Act not only as such confessions are not allowed, but also because material brought to refresh the memory of a witness must be that which the witness wrote him or herself (sections 26, 159).

9. Nay Phone Latt & Thin July Kyaw: Some "act detrimental to the security of the state"

ACCUSED	*1. Nay Phone Latt, 28*
	2. Thin July Kyaw
ARREST	*29 January 2008*
CUSTODY	*Insein Prison*
CHARGES	*505(b), Penal Code (both defendants); section 32[b], Video Act, and sections 33(a) & 38, Electronic Transactions Law 2004 (Nay Phone Latt only)*
TRIAL	*Felony Case Nos. 69-72/2008 Yangon Western District Court, Judge Daw Soe Nyan, Deputy District Judge, No. Ta/1761 presiding*
ISSUES	*Detained without evidence and with police-arranged witnesses*
APPEAL NO.	*AHRC-UAC-204-2008*

Nay Phone Latt

One of those cases that the same police officer has lodged using the same two witnesses as in the case of Win Maw is against blogger Nay Phone Latt. Like Win Maw, Nay Phone Latt has been charged with section 505(b) after he was arrested at the end of January 2008 and accused of having defaced images of national leaders, writing and cartoons in his email inbox and having distributed these to upset the public tranquility. According to the police, in December 2007 when he went to Singapore he also met political activists and went to see the "Four Fruits" (Thi Lay Thi) entertainment troupe, whose CDs of performances he copied and passed to others, among other things.

As in other cases arising from last year's protests, there is a range of problems with the cases against Nay Phone Latt. First, the police have not presented any evidence that he had himself been responsible for distributing any of the contents that they found in his email inbox, which he had received from elsewhere, not made himself. Secondly, the information given by the police on events in Singapore are irrelevant to the cases that have been lodged against him. Thirdly, up to the time it went to Singapore, the entertainment troupe had its CDs freely sold in Rangoon. Fourthly, Nay Phone Latt was interrogated and detained at an army camp, a fact acknowledged by the investigating officer in his testimony, which is a flagrant violation of the law on evidence. Fifthly and finally, the case was yet again heard in a closed court inside the Insein Prison, rather than in an open court as should usually be done by law.

Thin July Kyaw

Another person who has been charged together with Nay Phone Latt under section 505(b) (Felony Case No. 70/2008) is Thin July Kyaw, a young woman accused of having taken items for persons in hiding after the protests. According to the police, Thin July Kyaw received items of clothing and CDs from Nay Phone Latt one time at the American Center and one time at a teashop in the Yuzana Garden that were for another person named Ma Ni Moe Hlaing. Furthermore, Thin July Kyaw was accused of having contact with one of the young women who led the first protests in August, Nilar Thein, through a school friend, and of having sent money and other things to her after she went into hiding in August.

Electronic Transactions Law

33. Whoever commits any of the following acts by using electronic transactions technology shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and may also be liable to a fine:

(a) doing any act detrimental to the security of the State or prevalence of law and order or community peace and tranquillity or national solidarity or national economy or national culture.

38. Whoever attempts to commit any offence of this Law or conspires amounting to an offence or abets the commission of an offence shall be punished with the punishment provided for such offence in this Law.

10. Khin Moe Aye & Kyaw Soe: Guilty of allegedly holding US dollars

ACCUSED *1. Khin Moe Aye (a.k.a. Moe Moe), 40*
2. Kyaw Soe (a.k.a. 'Talky'), 41

ARREST *16 December 2007*

CUSTODY *Insein Prison*

CHARGES *24(1), 1947 Foreign Exchange Regulation Act, brought by Inspector Police Major Ye Nyunt (Police No. La/58188), Special Branch; but original investigation under Captain Myo Win Aung, military intelligence*

TRIAL *Felony Case No. 111/2008 Sanchaung Township Court, Judge Daw Than Htay (Special Power), Assistant Township Judge, No. Ta/2043 presiding*

ISSUES *Concocted case under ordinary criminal offence, illegal arrest and custody, many breaches of trial procedure*

How the ordinary criminal law is used to target anyone in Burma for any purpose that the state sees fit is exemplified in the case of Khin Moe Aye and Kyaw Soe. As Police Major Ye Nyunt apparently had no case that could be brought against them under the Penal Code he has instead charged them with illegally buying and hoarding foreign exchange.

As authorised exchange outlets in Burma give very low rates, it is common for people, like in all other areas of life, to buy and sell foreign exchange through the black market. Unauthorised traders in money can be found everywhere in Rangoon, and the police and local authorities also engage in this trade and turn a blind eye to those buying and selling cash under their watch.

However, the police officer bringing this case has accused Khin Moe Aye of having been in illegal possession of about USD 1300 and 100 Euros and Kyaw Soe of having kept the money because of their suspected connection to other people involved in the protests of last year.

As in other cases, there are many flagrant breaches of ordinary law in the charges against the two. First, the items of evidence were purportedly kept at the special court inside the Insein Prison rather than at a police station as required by law, although there are serious doubts about the existence of any such evidence at

Khin Moe Aye

all: the "witnesses" that this evidence was collected and stored at the prison facility are prison guards, rather than ordinary citizens as is normally required. Secondly, as this is an ordinary criminal case it should have been handled under the Sanchaung police station, which covers the area where the offence is alleged to have occurred, not through Special Branch. Thirdly, although the case is under the jurisdiction of the Sanchaung Township Court, the hearings are being conducted inside the prison, which not only violates the law on holding an open inquiry, but also breaches the ordinary criminal procedure that the case should be heard in the court of the locality where the offence was allegedly committed (CrPC, section 177). There are neither grounds nor authority for this case to have been transferred for hearings inside the prison, not in accordance with the law on procedure or any orders given. Fourthly, the two accused were illegally held in prison from December 16 until 26 March 2008 when they were finally brought to the court, without any remand, a fact admitted by the investigating officer in his cross-examination before the court.

It also emerged from the details of the case as given by Police Major Ye Nyunt in court that as in other cases of this type, the police did not arrest the defendants at all but MAS personnel did at Kyaik Htoe town and sent them to the central prison, and transferred the case to the police for prosecution. Also, when the two were originally brought to the prison, the officers had not uncovered the foreign exchange; it was only as they were going through the baggage of the couple in the presence of prison officials, that they supposedly found the money upon which the charges were laid. In other words, the two accused were first detained and brought to the central prison without any specific charge or suspicion having been levelled against them at all, and only once there was the case made. However, the officer who brought the case to the court was not involved in any of this and had no specific knowledge to offer other than what he had been told to present by his superiors.

Nargis: World's worst response to a natural disaster

Asian Human Rights Commission, Hong Kong

In the weeks after Cyclone Nargis swept through lower Burma on 2 and 3 May 2008, bringing in its wake a tidal wave that submerged vast areas of the delta region and took with it what was ultimately an untold number of lives, it quickly became apparent that from the time of the cyclone's approach and in its aftermath, the response of the military regime was in fact the world's worst response to a natural disaster of any government in modern times.

Not only did the generals deliberately avoid contact with world leaders and international organisations desperate to offer assistance to the millions left in dire need of water, basic food and health care, not to mention longer-term relief but they also forged ahead with the charade of a referendum on a new constitution designed to extend their grip on power indefinitely. Government officials were instructed specifically to neglect the plight of the storm victims and continue their work to prepare for the referendum, which was merely postponed by two weeks in some townships, including holding public meetings where locals were ordered to attend or pay fines. And the twisted priorities that characterise dictatorship became further apparent when sailors who left their docked ships at the Thilawar Pier during the height of the cyclone were reportedly detained and charged with abandoning ship. The situation even became so absurd that the Secretary General of the United Nations was making phone calls to Senior General Than Shwe but he was refusing to receive them.

Realising that the government was not going to do anything to assist them, local people, and then those further away from the worst affected areas, began organising themselves. In Rangoon residents and monks cleared roads themselves and shared water and other essentials. Where soldiers were sent out to do some work, ridiculously they went into the houses in the area to ask people to lend knives and saws with which to cut. In the delta, thousands of homeless people gathered at monasteries and received assistance from monks, many of whom also took on impromptu relief coordinating roles.

The regime went beyond being obstinate to outright criminality when on May 9 it seized the World Food Programme's supplies in Rangoon and forced a planeload of supplies from Qatar to be returned to the country of origin. The taking of the supplies came as such a shock to a WFP spokesman that it was rightly described as "unprecedented in modern humanitarian relief efforts".

Junta expels Qatar aircraft carrying relief supplies

Mizzima News, May 9, 2008

The obduracy of the Burmese military junta is inexplicable. On Thursday it sent back an aircraft from Qatar carrying relief material for cyclone hit victims. The aircraft was sent back from Rangoon's Mingalardon airport. The military aircraft from Qatar carried a team of 62 people along with relief material including medicines and landed at the Mingalardon airport, a source working in the airport said. "They were sent away after officials from the Ministry of Home Affairs met them at about 9:15 a.m.," the source said. In a statement issued from Naypyitaw, the junta's Foreign Ministry said the government refused to allow the rescue and information team which came in the aircraft, therefore the government has ordered the aircraft to return. "Myanmar (Burma) had no prior knowledge of the rescue, search and information team which came along with relief supplies. The government was only aware that the aircraft would come to hand over relief supplies," the statement said.

UN Suspends Aid Shipment to Burma

Wai Moe, The Irrawaddy, May 9, 2008

The UN announced on Friday that it has suspended all aid shipments to Burma, following the junta's seizure of all food and equipment of the World Food Program (WFP). WFP officials said they have "no choice" but to suspend their aid efforts following the unprecedented seizure by the secretive military government. As a humanitarian disaster grows in the Irrawaddy delta, the junta has drawn worldwide criticism for its foot-dragging in allowing humanitarian aid to reach the survivors of the cyclone that wracked the country last week. Well-dressed Burmese army officers and soldiers were doing photo-ops on state media on Friday, shown delivering some basic relief items such as food and water to cyclone victims in a superior, condescending manner. Meanwhile, perhaps as many as 1.5 million people in the affected areas are hopeless and helpless... The junta's mouthpiece, The New Light of Myanmar, said on Friday that it will accept relief supplies, but no foreign aid workers or rescue teams.

Emissaries who visited the country, like the prime minister of Thailand, demonstrated that some small gains could be made, and some concessions were obtained and a degree of international assistance has been allowed. However, it is paltry by comparison to the scale of the disaster and accompanied by persistent needless obstacles presented by the regime.

The world has proven itself incapable of coming to terms with a regime that is so odious that it places the small risk of its own position being undermined by letting in foreign assistance, or even talking on the telephone, over the basic needs of its citizens for water, food and medicine. The cost in terms of human lives on a vast scale was manifestly of no concern to it, and yet world opinion and political will proved unable to address this utter immorality.

For years there has been a hard debate among humanitarian aid workers and regional specialists about the merits or otherwise of engaging with Burma's government in order to reach the population. That debate is now in many respects irrelevant. There is no possibility of meaningful engagement with an administration that goes even beyond the denying of access to outside groups when millions of its people are in desperate need of help and to the point of robbing the UN. Although ways will be reopened and some methods found for work in the country under this government, at no time can it be forgotten as to what sort of administration it really is with which the world is dealing.

Senior General Than Shwe: Voting, not helping

The Association of Southeast Asian Nations, China and India need to be singled out for their belated and inconsistent approaches to a problem of such enormity right on their doorsteps. Collectively, they too must go down in history as having failed the people of Burma. Had the association and these two presumptive superpowers shown strong leadership and a determination from the start not to put up with any nonsense, things could have been different. But their inadequate and uncoordinated reactions belittled the disaster as well as its victims and left everything in the hands of the generals.

One effect of the cyclone is likely to be in the form of a vastly increased number of routine human rights abuses, although these are extremely difficult to document in the affected areas. Reports from around the country, not only from directly affected regions, indicate that arbitrary taxation has been on the rise on the pretext of cyclone recovery efforts. Forced labour is also reportedly increasing, as there is a desperate need to rebuild damaged infrastructure, which was in many places to begin with. There have been reports of children orphaned due to the cyclone being picked up and taken away in army trucks, ostensibly for special care.

Another effect is in the form of persons involved in the relief effort, taking up the slack left by the lack of either international or government aid, themselves being charged. Among them have been young men who assisted in cremating and burying the bodies of deceased persons, including a nationally renowned comedian, Zarganar, and the leader of the Human Rights Defenders and Promoters Group, U Myint Aye.

Constitution referendum amid cyclone exposes illegitimacy of junta

Awzar Thi, Jurist Hotline, May 14, 2008

May 10 was supposed to be a big day for Burma's military, the day that it legitimated itself through the ballot box. On that day, millions of eligible voters were supposed to come and freely express their approval of a constitution that would guarantee the army a quarter of seats in parliament and reaffirm its role as the leading state agency in a "discipline-flourishing" democracy, with a constitution of the generals, by the generals, for the generals.

That was the plan. In reality, the military's legitimacy has been decided upon by something else entirely. Cyclone Nargis not only obliterated hundreds of coastal villages and with them prospects for a trouble-free poll, but also any chance that the regime can now or at any time in the future obtain the credibility at home or abroad that the referendum was intended to secure for it. Never mind the widespread claims of vote rigging, bullying and miscounting. That the referendum was held at all, that almost two weeks on cyclone victims have received no help and are dying in makeshift huts of cholera, that rivers and fields are still full of bloated corpses and that officials are selling or hoarding relief supplies delivered from well-meaning donors abroad all speak to the regime's barbarity and its absolute want of legitimacy.

The junta's store of legitimacy, to the extent that it existed at all, was already greatly diminished by the events of September 2007. The putting down of the latest popular uprising was in some respects even more shocking than the crushing of protests in 1988, albeit less bloody, because this time around Buddhist monks were in the forefront of rallies. Not only do the majority of people in Burma venerate the monks but the generals too, in the absence of any singular unifying ideology of old, have used them as a central plank in the platform upon which they have stood for the last two decades. By pressing on since then and presenting themselves as pious leaders on a righteous path, the army leaders have instead consistently reminded the public of their sins rather than of any advertised virtues.

The other main element in the propaganda, leaving aside the state stability humbug, has been national development. New roads, bridges, dams, weirs, universities, schools, hospitals and crops are the stuff from which the military has sought to build a legacy. People can travel more easily, grow more plants more often, study harder and get better medical treatment than ever before. Or so the story goes, thanks to the government's benevolence. It is a story that was never true, but in the aftermath of the cyclone has been shown to be so horribly wrong that even the most skeptical of citizens has been shocked that the regime would stoop to the point of blocking international aid from starving villagers and stealing from the small amounts that it has allowed in. Even the most cynical of observers has been alarmed that boxes of supplies from Thailand have had the names of senior officers plastered over the top of the kingdom's labels, only to be taken back from dazed ostensible recipients anyhow after the television cameras had been turned off. And that is just a little of what has happened in the past week and a half, a week and a half in which the ruling clique has really shown its true colours, their unsurpassed ugliness.

The ballot boxes from May 10, and those from the remaining 47 townships where the vote was postponed to May 24, will be both full and empty: full of little papers that will one way or another be taken as an endorsement of the army's continued rule, but empty of substance and devoid of meaning. The referendum was not a sham, as so many commentators and political opponents have said so many times in recent weeks. It just wasn't anything at all. Whatever it was supposed to be it was not; whatever it was supposed to decide has been decided elsewhere: a great cost for absolutely nothing.

Homeless couple hit for speaking against referendum

RFA, May 7, 2008 (AHRC summary)

The day before Nargis made landfall, officials were out in villages in Rangoon Division, including Kyanbin, Tarpa and Kwinbauk, handing out imitation referendum ballots with green ticks and details of the voter on the back. After the cyclone, on May 5 a group of officials led by a local fire chief named Thaung Htun assembled people in Hlaingthayar and (or) Shwepyithar industrial areas on the outskirts of Rangoon, and amid the wreckage insisted that the assembled people support the draft constitution. When a person present couldn't contain his anger and yelled that there was no way he would support the military government, Thaung Htun hit him. Then when the man's wife said that he had shouted out not from hatred but from depression that their house had been destroyed in the storm, Thaung Htun hit her too. She was taken to the Shwepyithar outpatients department where the wound had to be stitched up.

A crying baby and a sigh

DVB, May 11, 2008 (AHRC summary)

A woman who sighed while in a queue to vote in the constitutional referendum on Saturday, May 10 was threatened with three days' jail and a fine. The woman, Ma Thaung Le (a.k.a. Ma Yi Myint) was waiting to vote at polling station no. 1 in Zigone town, Pegu Division around 2:30pm when she sighed out loud. The ward chairman and police accused her of disrespecting the process and detained her, throwing the polling station and surrounds into uproar. According to one person, she sighed because of the crying of her 3-year-old daughter whom she had left at home to come and vote. People begged the officials not to arrest her, as she survives from day to day by selling bean sprouts and could not afford to be away from her child. Finally, the ward chairman, U Tin Ohn, settled the matter with a payment of 10,000 Kyat (around USD 8), which was collected among the locals as Thaung Le has no money.

Zarganar (a.k.a. Ko Thura), a famous comedian in Burma who took the lead in relief efforts among members of the arts and entertainment industry, had his house searched and was taken away at the start of June. According to information that the Asian Human Rights Commission pieced together from a number of sources, around seven police led by the Rangoon Western District police chief together with the local council chairman came to Zarganar's house in Rangoon just before 8pm on June 4 and went inside saying that they just wanted to search it. After they recovered a computer, some VCDs of the cyclone damage as well as the new Rambo movie (the story is situated in Burma) and the wedding video of the junta leader's daughter they said that they would also take Zarganar with them "for a short while", meaning "around a couple of days". They also took around USD 1000 of money for the cyclone relief effort.

Zarganar has been working constantly on cyclone relief since May 7, and had given numerous interviews to overseas-based radio stations and other media about his work and the needs of the people. He had also ridiculed state media reports about the cyclone aftermath and in an interview with the Thailand-based Irrawaddy News service published on May 21, Zarganar said that many cyclone survivors didn't want the UN Secretary General to

Zarganar

visit for fear that security would be tightened and that they might get sent away in order to make the temporary resettlement camps look good for the VIPs.

According to Zarganar's sister, he had used all his own money for the cyclone victims and had sold his and his wife's mobile phones (which are expensive in Burma) to fund the work. He had organised over 400 volunteers to work in some 42 villages that had been neglected since the cyclone struck. Following Zarganar's arrest, the group's relief efforts also were halted.

At the end of July, Zarganar and former sports magazine editor Zaw Thet Htwe, who had also been working hard for cyclone victims, were brought into the closed court within the Insein Prison for the first time and like so many of the people accused over the September 2007 protests, charged with violating section 505(b) of the Penal Code for causing public alarm. The families of the two were not informed that they would be brought on that date and charged.

Zarganar has in total been charged with seven offences under section 505(b), 295 (defiling a place of worship with intent to insult religion), and under the Illegal Associations Law, Video Law and Electronic Transactions Law: the same categories of offences as those against Nay Phone Latt (see 'Ten case studies in illegal arrest and imprisonment, this edition of *article 2*, case no. 9).

Cyclone relief no laughing matter

Awzar Thi, UPI Asia Online, June 5, 2008

On the night of June 4, a group of police officers came to a house in suburban Rangoon, searched it and took away one of the occupants. But the person they took is not a wanted robber, murderer or escapee. He is a comedian.

Although Zarganar is famous in Burma for his antics on stage and screen, he has not been joking much lately. Instead, he has been at the front of local efforts to get relief to where it has been needed most since Cyclone Nargis swept through his country a month ago.

Zarganar, whose adopted name means "pincers", has thrown everything into the relief effort, organising hundreds of volunteers in dozens of villages to help in giving out food, water, clothes and other basic necessities to thousands of people.

His sister told Voice of America that he had sold his and his wife's mobile phones to use the money for the work, and that as the monsoon is setting in they had just purchased seeds to distribute in order that villagers who have nothing to plant might at least grow vegetables and stave off hunger.

He has also been a vocal critic of the government response to the cyclone, constantly pointing to the shortfalls in assistance and needs of survivors.

"The odor [of death] sticks with us when we come back from the villages," Zarganar told The Irrawaddy news service on June 2, a full month after the cyclone struck.

"Nobody can stand it, and it causes some people to vomit. How could people find edible fish and frogs in that environment?" he asked, in response to an editorial in a state-run newspaper that survivors did not need foreign aid as they could catch and eat small animals instead.

Although perhaps the most outspoken, Zarganar is not the first person to be detained over the cyclone response—or the lack of it.

In mid-May, at least eight journalists from local periodicals who were doing their best to gather news and report on the tragedy without running afoul of the censors were held overnight at an army camp in the delta. They were released, but not before being threatened and having their digital photographs deleted.

Back in Rangoon, the reporters' editors were also told to stop covering the extent of damage and instead publish articles on rebuilding efforts. The warnings had the desired effect. Journals that were the week before packed with images of hungry, tired and frightened people sheltering in monasteries instead concentrated on the setting up of emergency camps and delivery of supplies.

Meanwhile, authorities continue to constrain and prevent domestic donors from getting where they want to go.

At the end of May, some blocked a bridge into Rangoon and impounded vehicles that were returning from taking goods to the needy.

Monks who tried to deliver food from other parts of the country also found officials interfering with their every move, wanting to make it appear that they were the ones responsible for the largesse.

And international agencies have corroborated reports from many areas of people being evicted from temporary facilities and being told to go back to homes that they no longer have.

Zarganar has a home, but he is nowhere to be found in it tonight. Not for the first time, he is in a cell somewhere, awaiting news of what will happen next.

The last time he was released, after getting involved in the monk-led September 2007 protests, he was in good humour, punning about the regime's hypocritical religious rites and the dogs that kept him awake while being held in an army barracks.

He may not find so much to laugh about this time. The scale of the ongoing disaster and the urgency with which relief is still needed seemed to have been too much even for Zarganar's big funny bone. His customary deep laughter was absent from interviews he gave in the days before being taken away.

Burma's new constitution may insist that nobody can be held for more than a day without going to a court or being charged, but as Zarganar knows full well, the gap between what is said and done in his country is far too large for such words to be taken seriously, although that is no laughing matter either.

U Myint Aye

Similarly, 57-year-old U Myint Aye and two other members of the Human Rights Defenders and Promoters (HRDP) group were in early August taken away as a consequence of their cyclone relief work. A group of police and officials came to Myint Aye's house at around 4pm on 8 August 2008 and after searching it for over two hours and taking some documents and other items they told Myint Aye to go with them for a short while. The group included Police Captain Kyaw Sein of Rangoon Division Police (intelligence), Special Branch personnel, the chairman of the ward council and another council official.

Myint Aye did not come back that night as promised. The next afternoon, another team led by the chief of police in Kyimyindaing Township came to the house and asked for some sets of clothes for Myint Aye, indicating that he would be detained for some time. They told his family not to worry and to ask for any help if they need it; however, as in other cases like this they did not give any details about where they had taken Myint Aye or why.

Although Myint Aye's house was itself affected in the storm he instead had gone promptly to the worst-affected areas and was by May 6 among the first people to have gone into the delta and begun reporting to overseas-based media about the lack of any assistance. After a few days in the delta he told one Thailand-based group that

> The refugees' suffering here is great. We have bought and distributed as much rice grain as we can. HRDP Bogalay residents have taken charge. We can't distribute it to one (victim) by one. We'd get trampled by the crowds. We give three bags of rice to a monastery to cook, the next day, another three bags. So far we've distributed over 70 bags a little at a time like that.

Myint Aye's detention followed that of another two members of the HRDP group. Myo Min, who lives nearby, was taken on August 6 and Ko Thant Zaw Myint was taken on August 7. The arrests coincided with the visit to the country of the new United Nations special expert on human rights in Burma.

At time that this edition of *article 2* was going to press, it was reported in the state-run media that Myint Aye is to be charged with allegedly organising bombings in Rangoon and for receiving money from abroad for that purpose.

Over the last two to three years many members of the HRDP group have been arrested, including Ko Thiha, whose case is also mentioned in this edition, convicted of sedition (Penal Code section 124A) and upsetting public tranquility, section 505(b), sentenced to 22 years in prison; Ko Myint Naing, 40, Ko Kyaw Lwin, 40, U Hla Shein, 62, U Mya Sein, 50, U Win, 50, and U Myint, 59, the "Hinthada 6", sentenced to four to eight years for upsetting public tranquility (Penal Code section 505(b)(c)) and Ko Min Min, 30, residing in Pyi Township, sentenced to three years' imprisonment for illegal tuition (for the cases of the Hinthada 6 and Ko Min Min see, 'Burma, political psychosis and legal dementia', *article 2*, vol. 6, nos. 5-6, October-December 2007).

NEW BOOK: The Pakistan Lawyers' Movement—An Unfinished Agenda

By Muneer A. Malik, Published by the Pakistan Law House

A book on one of the most amazing movements in defence of democracy, rule of law and human rights to emerge in recent times. This movement has both successfully challenged a military dictatorship while at the same time developed a civil society to strengthen its country's constitutional framework. It has also changed the image of the 'black coats', who had been perceived as politically and socially apathetic and mostly interested only in their own welfare and enabled them to emerge as a resilient profession committed to upholding the independence of the judiciary and the dignity of the law.

The author of the book is one of the mentors and leaders of the movement, formerly the chairperson of the Bar Association of the Supreme Court of Pakistan. The following is an extract from his preface:

> Our fight was to change mindsets within the judiciary so that they may liberate themselves from the reviled and thoroughly discredited doctrines of the past that were used time and again to justify the militarization of the institutions of state. We had to change the mindsets of our politicians – that political power emanates from the people and not from foreign capitols; that they turn anti-people when they welcome military takeovers or share the crumbs of power with usurpers; that democracy and tolerance are inseparable twins and that they must strive to strengthen institutions and not men. We wanted our armed forces to know that we honour the soldier who has laid down his life for the defense of the country but that we are bounden to resist when the watchman forcibly takes over the master's house and that their guns should be pointed outwards to defend the frontiers of our lands rather than pointing inwards at the people they have sworn to protect.

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