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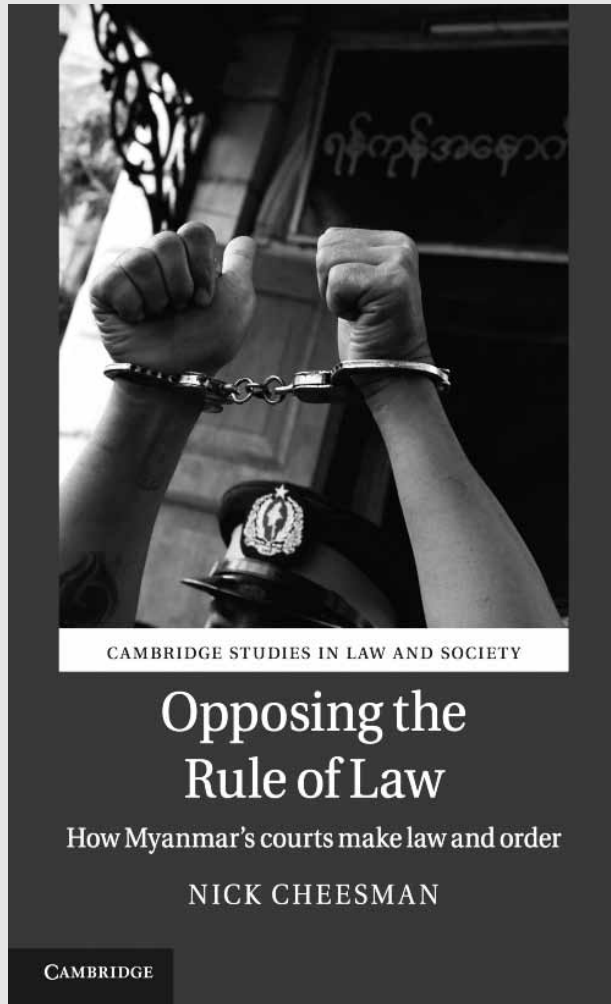
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Police torture & crackdown
on protests in changing Burma



Opposing the Rule of Law

The rule of law is a political ideal today endorsed and promoted worldwide. Or is it? In a major contribution to the field, Nick Cheesman argues that Myanmar is a country in which the rule of law is 'lexically present but semantically absent'. Charting ideas and practices from British colonial rule through military dictatorship to the present day, Cheesman calls upon political and legal theory to explain how and why institutions animated by a concern for law and order oppose the rule of law. Empirically grounded in both Burmese and English sources, including criminal trial records and wide ranging official documents, *Opposing the Rule of Law* offer the first significant study of courts in contemporary Myanmar sheds new light on the politics of courts during dark times and sharply illuminates the tension between the demand for law and the imperatives of order.

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Contents

POLICE TORTURE & CRACKDOWN ON PROTESTS IN CHANGING BURMA

Introduction	3
<i>Basil Fernando, Director, Policy and Programme Development, Asian Human Rights Commission</i>	
Crackdown on protests: exclusion of students' rights in education law	7
<i>Noreen, intern, Asian Human Rights Commission</i> <i>Danilo Reyes, editor, article 2</i>	
Myanmar: Ruling under militarized police	16
<i>Min Lwin Oo, associate, AHRC Burma Desk</i>	
Torture by law enforcers: are Burma's police the new military?	21
<i>Danilo Reyes, editor, article 2</i>	
Twelve stories of torture cases in Burma, 2012-15	28
<i>Burma Desk, AHRC</i>	
The legacy of dictatorship in Myanmar's judicial system	43
<i>Thein Than Oo, Myanmar Lawyers' Network</i>	
Burma's silent struggle: ensuring mental health of tortured political prisoners	47
<i>Assistance Association for Political Prisoners (AAPP), Burma</i>	
Mind of steel, heart of gold: tribute to U Win Tin	59
<i>Debby Chan Sze Wan, PhD candidate, University of Hong Kong</i>	

INTERVIEWS

"To sign UNCAT depends on who holds the real power"	63
<i>Dr. Aung Moe Nyo, Member of Parliament (Pyithu Hluttaw), National League for Democracy, Burma</i>	

“We have to fight against unjust law with just law” <i>Myint Thwin, practicing lawyer and former political prisoner, Burma</i>	67
“The military not the court decides” <i>Thein Than Oo, practicing lawyer, Burma</i>	72
“Students are still in jail, I can’t just ignore them” <i>Aung Min Khine, a 16-year-old student protestor, Burma</i>	76

APPENDIX

Universal Periodic Review (UPR) submission to the UN Human Rights Council on Myanmar <i>Asian Legal Resource Centre</i>	81
Features of the practice of torture by law enforcement agencies in Myanmar <i>Asian Legal Resource Centre</i>	87

Introduction

Basil Fernando, Director,
Policy and Programme Development,
Asian Human Rights Commission

During the last 15 years the Asian Human Rights Commission and its sister organisation the Asian Legal Resource Centre have published many reports on the state of the legal system and the courts system of Burma. This new report is an addition to a long list of such publications¹.

In essence, Burma's legal system and the courts system are designed and maintained to protect the state. Both systems are completely opposed to the idea of the protection of the rights of the individual citizen. Thus, at the heart of the problem facing the people of Burma is that their legal system and the courts system are opposed to them.

Naturally, there can be no democratisation without changing the very fundamentals of this legal system and the Courts system. The recognition of the rights of all citizens of Burma as individuals should be in-built into its legal structure.

Incompatibility of the legal structure of Burma with a political system based on democracy will not be erased merely by making new laws, purportedly based on the introduction of a democratic political structure into Burma. The legal structure, including the administration of justice in court, is an integral part of the political structure as democracy is based on the doctrine of separation of powers.

The legal structure as it stands now is completely opposed to the separation of powers. This legal structure is constructed on the basis of an executive alone, being regarded as the state. There is no recognition of a parliament and a judiciary as two separate branches which are independent and are not subordinated to the executive.

Burma's legal structure is completely subordinated to the executive. It follows the instructions and the guidelines for its actions given by the executive and supervised by the executive.

¹ Kindly see the of previous publications.

“The situation of the law and the courts in Myanmar since 1962 has not received adequate attention internationally.”

Executive control of the legal system and the judiciary started in 1962 and continued consistently irrespective of various kinds of purported political changes that Burma is supposed to have undergone in the previous decades. None of these supposed changes have in any way limited the ‘executive control’ of the legal system and the court system.

Fundamental change to the legal system and the court system as one that respects the rule of law and the democratic norm of the separation of powers could take place only when the executive abdicates or is made to abdicate the total control of law and justice in Burma. The test of this change is the effective recognition of the rights of all the individual citizens of Burma.

As of now, a citizen of Burma can only be a defendant for instance, in a land case and can never be a plaintiff. If an individual citizen of Burma wishes to legally contest the occupation of land that this individual citizen claims to be his by someone else, there is no legal avenue for him to do so. This is a problem faced by thousands of the citizens of Burma in all parts of the country.

In such a situation - as demonstrated by literally hundreds of cases – what happens is that, the illegal occupant will through the intervention of the police bring the one who claims to be the lawful owner to court, as a defendant. And the courts will invariably give its verdict against the person claiming to be the lawful owner by imposing a prison sentence on him. By this, the court system not only punishes the person claiming to be the lawful owner but also reconfirms the allegedly illegal occupant’s right to continue to occupy such land. The court order to imprison the claimant as a lawful owner in fact becomes the means by which illegal occupants’ allegedly claim title to the property. The dispute thus ends by silencing the claimant as a lawful owner and in fact it is a punishment for making such a claim.

The situation of the law and the courts in Burma since 1962 has not received adequate attention internationally. The essentially illegal status of the courts has not been challenged even by the United Nations agencies. Everyone seems to act with a pious hope that Burma’s executive - controlled law and courts systems will act as if it is a rule of law system. This delusion is at the heart of the failure of international agencies, including UN agencies to name Burma’s legal structure for what it is – as one that is completely controlled by the executive.

It is on this basis that it can be claimed that as yet there had not been any advance in the promotion of the rights of the individuals in Burma despite claims of ushering in a period towards democratic reforms.

That the opening of space for the parliament and holding of elections will by itself bring about the possibility of change for administration of justice in Burma has proved to be an illusion.

The changes of a legal and a court structure must be consciously and deliberately made and should not be consequential of the introduction of the space for the parliament.

The rights of an individual citizen to go before a court and to challenge anyone else, including any of the lawful authorities, should be deliberately created. There needs to be a discourse on the development of legal remedies that will fundamentally alter the character of the court system as being completely under the control of the executive. By the development of legal remedies that individual citizens can resort to, the notion of separation of powers could be effectively introduced.

“There needs to be a discourse on the development of legal remedies that will fundamentally alter the character of the Court system.”

However the introduction of such a possibility for creating legal remedies which will recognise the rights of individuals in Burma requires a complete overhauling of the court system. There would have to be a Supreme Court that has the capacity and the will to defend the separation of powers and the independence of the judiciary. Such a Supreme Court will become possible only when there are judges who have an extensive knowledge of the law and who also will not be punished by the executive if they assert their independence. Thus the creation of effective legal remedies for the protection of individual rights requires on the one hand the creation of a Supreme Court with capacity and powers and a change in the political culture where the executive will abdicate its predominant control over all aspects of the country's legal structure.

As much as there needs to be a change of the quality of the Supreme Court there also needs to be changes in the quality of judges at all levels. These judges need to see themselves not as servants of the executive but as members of a branch of government which is independent and equal in status to the executive.

After a period of repression from 1962, even among the more liberal citizens there had been changes of mentalities formed by the habit of subservience to the executive. Long periods of repression always bring about such mentalities and this can be illustrated by examples from many other countries. This mentality of subservience survives even after the actual conditions which generated the abnormal powers of the executive have begun to be eroded and this mentality lags far behind the objective of effecting the changes. It is only by very conscious movements of the people themselves that such servile mentalities could be gradually abolished.

The first step needs to take place among those more active in the civil society such as lawyers and others who are capable of grasping this complex reality and who want to make change. The capacity of these groups of persons should be cultivated with assistance from those who live in countries where separation of powers and the independence of the judiciary have become a

“The situation at present requires above all, a strong enough cultural exchange of those who are active in the legal and political fields in favour of democracy.”

quite a natural part of their way of life. Thus, the situation at present requires above all, a strong enough cultural exchange of those who are active in the legal and political fields in favour of democracy in Burma, with those in the outside world who have the traditions, conventions and the knowledge of the working of judicial institutions which are capable of protecting the rights of the individual.

The core of this cultural exchange needs to be the rights of the individual as against the draconian power of the executive. If this discourse can be effectively created and if more Burma lawyers, politicians and activists acquire the knowledge and the know-how of creating this change the day for ending the present structure of law and courts in Burma may not be far away.

What is required at this moment is a commitment to create the intellectual depth required for such a change.

Acknowledgement

This report was prepared by Noreen, designed and edited by Danilo Reyes, with the kind assistance of Meryam Dabhoiwala and Sister Marya Zaborowski.

Noreen is thankful and deeply appreciates the following persons for their contribution in this report: Ko Min Min Tun, who helped in collecting information and photos; Thiha Lwin, for allowing us to use his photos free of charge, and to lawyers and activists we interviewed. Also to AAPP and Debby Chan for their articles, and Min Lwin Oo and Nick Cheesman for their supervision and guidance respectively. To Cecilia and Zayar Lynn thank you for helping us in transcribing the interviews.

Lastly, to the courageous victims and their families, and to countless individuals and organizations who never lost hope for genuine democratization in Burma, we hope that you will find our modest contribution to your struggle meaningful.

Crackdown on protests: exclusion of students' rights in the education law

*Noreen, Asian Human Rights Commission
Danilo Reyes, editor, article 2*

Before the riot police's crackdown on the student protesters marching some 500 kilometers from Mandalay to Yangon on 20 January 2015, their demands were very clear: the democratization of Burma's education system. When the government announced the National Education Draft Law in March 2014, it did not contain the demands of education reform campaigners who had lobbied the government since 2012.

Among the campaigners is the National Network for Education Reform (NNER), a coalition of civil society groups, which argues that the draft law lacks sufficient input from ordinary people and civic organizations. Meant to reform the education system, the draft law ignores the views of those who suffer the impact of the system: students and teachers, ethnic minorities, persons with disability.

In fact, the draft was rather aimed at centralization of power. The National Education Commission, whom people expect to ensure democratic reforms, ignored the demands of the public, directly opposing democratic reforms in education. The NNER argued that to have a democratic education system, there cannot be tight and centralized control on matters regarding the development of education. This would deny academic freedom. The group's concern is deeply rooted in its various meetings, consultations and discussions held across Burma to seek public opinion on educational reform. Despite putting forward suggestions and recommendations to government representatives whom they met during the drafting process, all of their recommendations were excluded in the final draft.

When the National Education Law was finally enacted on 10 September 2014, it was the government's outright disregard of



A student raises his bowl upside down as a symbol of protest.

“The government’s outright disregard of public opinion; not only of the education campaigners, but of the people they consulted.”

public opinion; not only of the education campaigners, but of the people they consulted. This disregard provoked the students’ protest, with students, campaigners and the ordinary public questioning the legitimacy of the law. Launching a four-day protest in Yangon, student representatives called for a quadripartite dialogue between the Action Committee for Democratic Education (ACDE), the National Network for Education Reform (NNER), the Parliament and the Government, to amend the just passed National Education Law.

The Action Committee for Democratic Education made 11 demands from the government, which could ensure the realization of a democratic education system:

1. *Inclusion of representatives of teachers and students in legislation process of education policies and laws, by-laws and other related laws,*
2. *The right to freely establish and operate student and teacher unions and legal recognition for them,*
3. *Establishment of National Education Commission and University Coordination Committee mentioned in the approved National Education Law*

4. *Self-determination and self-management on educational affairs of individual state/regions and schools*
5. *Modifying current examination and university matriculation system*
6. *Modifying teaching methods to such that ensure freedom for thinking and self-studying of students*
7. *Inclusion of a provision in National Education Law that ensure freedom for the practice of ethnic languages and mother tongue based multi-lingual education for ethnic populations and tribes*
8. *Inclusive education for all children including children with disabilities*
9. *Resumption of enrollment for students previously expelled from schools due to the student uprisings*
10. *Allocation of 20 percent of national budget for education*
11. *Regulating of free compulsory education up to middle school level rather than primary level*

“They are asserting that the system of education must also change the manner they are taught in schools—from being docile to critical or independent thinkers.”

On 20 January 2015, after the Parliament and the Government failed to act on the students’ demands within 60 days to amend the newly passed law, the students took their grievance to the streets, marching for 15 days from Mandalay to Yangon (about 500 kilometers). The change in the education system that students are demanding is not simply a matter of law or a policy change. They are asserting that the system of education must also change the manner they are taught in schools—from being docile to critical or independent thinkers, by strengthening the foundation of their education, so they are on par with their regional and global peers.



Under decades of military junta, from 1962 to 2010, Burma’s education system was subjugated. When free speech is not encouraged in schools, it consequently also displaces students’ ability to think. Apart from the lack of encouragement or cultivation of critical thinking, most government schools could not even provide playgrounds, physical exercise (PE) lessons, or libraries to their students. The new generation is aware that the world is changing. Even though the foundation of critical thinking is weak, these students are demanding that their leaders take responsibility to address this by reforming the education system.

The interviews I conducted with students and activists reveal the stark reality of the current education system:

Ko Zaw Moe, a student activist:

We had been taught in low standard education system; especially critical thinking skill had disappeared in our learning process. The

reason is if the students know how to think what is good or bad, they may talk about injustice and they may try to change the system.

“ If the students know how to think, which is good or bad, they may talk about unjust and they may try to change the system. ”

That is why critical thinking skill had been taken away from our education. We can easily see what is happening in our education system by looking at university graduate students. What are they going to do after graduating? Are they all well educated? Don't they want to try or don't they have a chance to try to get better education?

An engineering graduate said:

“We don't have sufficient books to study and we could not access the library. Without practical lessons or any experiments, we anyhow pass our exams.

For example, my class teacher required us to submit a project for the exam. I didn't know how to do it, and there are no facilities in our school to do the project. So, I just bought a hammer from the market as my project, submitted it to my teacher; and I passed the exam. My teacher knew I bought the hammer.”



Ko Zaw Moe

In Burma, from Primary School to High School, students have to take monthly tests, called “chapter ending tests,” which are mostly memorization of the lessons. At the end of the academic year, students have to sit for the final exam. To pass the final exam, the marks of monthly tests are totaled. However, if a student fails in one subject or more, there is a system called “curing the result,” to make sure they are promoted to a higher level. Ultimately, regardless of the student's academic performance, everyone passes and goes to the next level.

As a result, when the students reach 11th grade, most of them find it difficult to pass the matriculation exam administered by the Myanmar Board of Examinations. In the 2014-2015 academic year, only 37.60 percent of the examinees passed the matriculation exam. The only way to pass is to rely on private tuition. Students from poor family backgrounds cannot afford private tuition however. Ordinary people hope that a good education system could ease the financial burden on parents, who would no longer need not to worry about their children's education.

In Burma, 60 percent or more of students attend college through the University of Distance Education under the Ministry of Education. Although some students can attend a full time programme in the University, most of them find themselves disqualified after they graduate. Even if a student completes her education though, they hardly have any employment opportunities. In the case of one engineering student, “*It took more than one year to get a six months training period without pay in one company.*” Even after undergoing training for free, there is no guarantee of an employment offer. This is the real scenario for most young graduates in Burma. This is what the students wanted to change.



Primary School students, age five to nine, in Tatthitkywn Village, Pandaung Township, Pyay District, Bago Region, Myanmar. *Photos by Thiha Lwin*

Meanwhile, it is not surprising for the riot police to use force to crackdown on the students' protest. Student movements have historically played an important role in political change under Burma's colonial and military rule.

Fourteen years after independence, Burma began to be ruled by a military junta. The most significant uprising and student movements are the 1962 Rangoon University Protest, against unjust university rules; the 1974 U Thant funeral student uprising, because of the Government's refusal to hold a state funeral for U Thant, third Secretary-General of the United Nations from 1961 to 1971; the 8888 uprising, against the withdrawal of currency notes without compensation, police brutal action against students, and demand to end the one party system in Burma; and the 1996 student demonstrations, against police brutality. In all of these cases, the students' legitimate demands were repressed by the use of violence, sometimes bloody. Some were killed, while others spent their whole lives in prison. The students never lost hope however.

Continuing this legacy, on 2 March 2015, the student protestors were blocked in Letpadan Township. A female student protester was beaten by the police the next day, drawing attention of students from all over Burma. Civil society condemned the

“Even if a student completes her education though, they hardly have any employment opportunities.”

“The authorities claimed that students started throwing things at the police. But the local people said authorities pre-planned to make it happen.”



Daw Khin Moe Moe

violence against the student, while the protesters called on the police not to use violence. However, a solidarity protest held downtown in Yangon was brutally cracked down upon by the police and civilian attack gangs, “Swunashin,” under the command of the authorities. A few more protests occurred condemning the violent crackdown.

On March 10, the authorities agreed to remove the barricade to allow the students to carry on with their protest. But the authorities later changed their minds and within a few hours they began ordering protesters to leave the protest site at once. When the protesters refused, the police began to use force in dispersing them. The riot police attacked the students and their supporters with batons and threw heavy materials at them. Even when students were running away, the police chased and beat them. The authorities finally cleared the protest site by arresting many of the students. Initially, about 127 individuals were arrested by the police, and sent to Tharawaddy Prison. More arrests occurred afterwards. As of 8 July 2015, documentation by the Assistance Association for Political Prisoners indicates that 78 persons are still in prison, while others were released on bail.

When various legal experts, civil society, and the ordinary citizens of Burma and international organizations condemned the crackdown, President U Thein Sein defended the action of the police saying, the “police just took preventive measures.”

But Daw Khin Moe Moe, a lawyer and mother of one of the students who was detained but is now released on bail, told *article 2* that there was no reason for the police to use force, and that the protesting students were holding a peaceful protest. She also said that the use of force in attacking the student protesters was instigated by provocateurs. She was of the opinion that if indeed students committed wrongdoing, the police should just send them to the police station for investigation and charge them according to the law.

“...all the protesters remained calm before the crackdown unlike the government accused. The authorities claimed that students started throwing things at the police. But the local people said that there were at least five people from different quarters and villages of Letpadan Township collected and gathered by the police near the protest site at late night of 9 March 2015, one day ahead of the crackdown. The authorities pre-planned to make it happen.

U Aung Thane, a human rights lawyer, supports Daw Khin Moe Moe’s views. He explains that the students were only exercising their constitutional rights to “peaceful assembly” and “freedom of opinion and expression.”



Student protest march to Yangon. Photo by Thiha Lwin

Section 354 of the Constitution states:

“Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality:

- (a) to express and publish freely their convictions and opinions;*
- (b) to assemble peacefully without arms and holding procession.”*

He added that if indeed the students violated the law, they should be charged for violation of the Peaceful Assembly and Peaceful Procession Act, not under the Penal Code. But even if the student protesters wish to comply in securing permission prior to holding protest under the Peaceful Assembly and Peaceful Procession Act, it is hard for them to fulfill. He said the protesters were charged for violations of the Penal Code, section 143 for unlawful assembly; section 145, for joining or continuing in unlawful assembly; section 147, for rioting; section 332, for voluntarily causing harm to deter public servants; and section 505 (b), on prohibition of the publication of or circulation of information that may cause public fear or alarm and which



U Aung Thane



Sketch by Lagoon Eain of student activist Aung Min Khine (in longyi) when he was beaten by the police.

may incite people to commit offences against the state or public tranquility. According to U Aung Thane, this section of the Penal Code is *ultra vires* or incompatible with the Constitution.

In a statement issued by the Asian Human Rights Commission on 24 March 2015, the process of seeking permission to hold a protest was described as “cumbersome” and “something the students could not fulfill.” They would have to apply five days ahead of the protests. The protest, however, resulted in large-scale support by the people. The government was compelled to meet with the students. They were met by members of the Parliament, representatives from the Ministry of Education and the NNER. In this dialogue, they reached an agreement that the newly passed law needs to be amended in line with the student’s 11 demands. When discussions on amendment were being deliberated in the Parliament, protesters waited for the result and put the protest on hold.

On June 25, the Pyitaungsu Hluttaw, Upper House of the Parliament, passed the Law Amending the National Education Law, but it did not include most of the student demands agreed

in the quadripartite dialogue. This clearly shows that despite discussions with the students, the government is still arbitrarily making decisions, excluding suggestions from citizens to improve their way of life. Like the President, most members of Parliament and government officials are from the military. As under military rule, the present government continues to use brute force and violence to tighten control and repress those with legitimate demands.

If, as the government claims, the country is changing in a democratic way, why is it necessary to use force and violence on people with legitimate demands? Why did the government exclude student demands in the process of lawmaking and educational reform? These are important questions that the Burmese government and international community should consider. Can the Burmese expect their country to be free and fair when people exercising their fundamental rights are beaten, arrested, detained and sentenced to jail, while those violating the law are not punished, and enjoy impunity?

Myanmar: Ruling under militarized police

Min Lwin Oo, associate, AHRC Burma Desk

After the coup d'état by Myanmar's army in September 1988, the People's Police Force became the Myanmar Police Force. The State Law and Order Restoration Council (SLORC) of the military regime established the Myanmar Police Force. The military regime's idea of a police force is that it should be under military command. The police are considered as a co-partner of the Armed Forces; during the annual Armed Forces Day parade on March 27, the police march side by side with the military.

The British-era Police Manual, notably from volumes 1 to 4, was replaced by a Myanmar translation that is "up to date" with the country's current situation. However, before amending the police manual, the Myanmar Police Force's Maintenance of Discipline Law was enacted on 26 April 1995.

The current Police Manual was published in 2000; however, the government prohibits public disclosure of this document. This non disclosure and prohibition is totally against democratic principles. The police manual is kept confidential, and the printing or distribution of it is prohibited. One of the reasons for this could be that the government would not want to disclose to the public that the structure of the Myanmar Police Force, as written in the manual, is almost the same as that of the military.

To modernize the Myanmar Police Force, the government formed the Myanmar Police Force Management Committee in line with Order 14/94 issued on 28 January 1994 by Lt. Gen. Khin Nyunt, former chairperson of the Myanmar Police Force Reforming Management Committee. Under this Management Committee, there are five sub-committees: judicial affairs, legal affairs, military intelligence, management, and practice and actual performance. The police manual and the function of the Myanmar Police Force Management Committee is designed to support the military regime.

The first and fourth volumes of the Police Manual were originally written in English. On 15 October 1999, the Police Manual Revision Committee was formed with the head of the Myanmar Police Force as the chairman, the Director General of the Central Institute of Civil Services as secretary, and officials from the Military Advocate General's Office, the Supreme Court, the Bureau of Special Investigation and the Myanmar Police Force as members.

The police officers under the Myanmar Police Force are aware of the content of the police manual because it is kept in all district police offices, and they are expected to follow what is written in the manual.

“ The police manual is kept confidential, and the printing or distribution of it is prohibited.”

Myanmar Police Force Reform Management Committee:

Lt-General Khin Nyunt	Secretary (1)	Chairman
Colonel Tin Hlaing	Minister for Home Affairs	Vice-Chairman
U Aung Toe	Chief Justice	member
U Thar Tun	Attorney General	member
Dr. Than Nyunt	Director General, Central Institute of Civil Services	member
Major General Thein Soe	Military Advocate General Office	member
Major General Kyaw Win	Director General, Deputy Military Intelligent	member
Brigadier-General Thura Myint Maung	Deputy Minister, Ministry of Home Affairs	member
Lieutenant Colonel Phay Nyein	Director General, State Peace and Development Council	member
U Soe Tint	Director General, Government Office	member
U Tin Aye	Director General (Supreme Court)	member
Dr. Tun Shin	Director General (Attorney General's Office)	member
U Aung Thein	Director General, General Administrative Department	member
Professor U Tin Tun	President, Central Cooperative College	member
Colonel Soe Win	Chief of the Police	member
U Kyaw Tun	Director General, Myanmar Correctional Department	member



Policemen barricading protestors in Letpadan. Photo by Thiha Lwin

Myanmar Police Force Reform Management Sub-Committee members:

Major General Thein Soe	Military Advocate General	Chairman
Colonel Soe Win	Chief of the Police	Member
U Than Myint	Director General, Bureau of Special Investigation	Member
Dr Tun Shin	Director General (Attorney General's Office)	Member
Police Brigadier General Nyo Thien	Chief of General Administration Department of the Myanmar Police Force	Member
Colonel Thar Han	Deputy Military Advocate General	Vice-Chairman

Myanmar is a country ruled in fact by the military regime, not the civilian government. Law is said to be successful if many people can understand it and make use of it appropriately, on their own. In such an environment, with support for the rule of law,

there will be few wrong deeds. Laws are publicized and people are made aware of them in various ways the world over. In Myanmar however, people's knowledge of law is not good enough to discuss the current 2008 Constitution. Nearly every citizen is unaware of how basic or constitutional law concerns them due to a lack of knowledge. In fact, it is suspected that there was a plan to confuse the population regarding the Constitution.

Under the 2008 Constitution, the Minister for Home Affairs is to be appointed by the Commander-in-Chief of the Defence Services. And, the Minister for Home Affairs and the Lieutenant General of the Myanmar Army become members of the Defence and Security Council. The Home Minister appoints other chiefs of staff, such as the Head of the Myanmar Correctional Department, the General Administration Department, the Union Civil Service Board, and the Myanmar Police Force to their respective posts.

“ The former leading officers of the police were transferred to the training school, only to handle record keeping.”

A major general from the military would become the Director General of the Police because the police major general is also appointed by the Minister of Home Affairs. The chief of police does not know or understand legal procedures in theory or in practice; nor do the subordinate officers that he appointed. The former leading officers of the police were transferred to the training school, only to handle record keeping. Experienced police officers were thus automatically removed from their posts and the police institution. The chiefs of jails from the districts, regions and states were also replaced by former army officers. It is also similar to the appointments of the ministers for the Ministry of Religious Affairs.

Htun Htun Oo, current Chief Justice of the Supreme Court of the Union, is himself a former military captain of the Southwestern Regional Command of the Myanmar Army. Tun Tun Oo, Deputy Attorney General, is also from the Military Advocate General's Office.

Section 301 (d) of the 2008 Constitution says:

The Chief Justice of the Union and Judges of the Supreme Court of the Union shall be a person of following qualifications,

- (i) who has served as a Judge of the High Court of the Region or State for at least five years; or*
- (ii) who has served as a Judicial Officer or a Law Officer at least 10 years not lower than that of the Region or State level; or*
- (iii) who has practiced as an Advocate for at least 20 years;*

The Deputy Attorney General is working with Toe Naing Mann, businessman and son of the Speaker of the Pyithu Hluttaw (lower house of the Parliament). Toe Naing Mann is the key advisor to the Pyidaungsu Hluttaw's Commission for the Assessment of Legal Affairs and Special Issues. They collude to ensure that any draft law protects the interests of the businesses operated by the military and their cronies. In many ways judicial power is influenced by executive power.

“Although the military claims they are no longer involved in politics, most of the members of the Union Solidarity and Development Party are former military personnel.”

Although the military claims they are no longer involved in politics, most of the members of the Union Solidarity and Development Party are former military personnel. They already have support from the military for the upcoming election. Twenty-five percent of the upper and lower houses of parliament consist of military representatives appointed by the Commander-in-Chief of the Defence Services.

Section 436 of the Constitution says:

If it is necessary to amend the provisions of Sections.....of this constitution it shall be amended with the prior approval of more than seventy-five percent of all the representatives of the Pyidaungsu Hluttaw, after which in a nation-wide referendum only with the votes of more than half of those who are eligible to vote.

Any changes to the constitution thus require votes from the military representatives.

According to the 2008 Constitution:

The three branches of sovereign power namely, legislative power, executive power and judicial power are separated, to the extent possible, and exert reciprocal control, check and balance among themselves.

Clearly, the supposedly transformed military personnel still rule the important political infrastructures of the country. The military is still a key political player. The government claims that Burma is reforming towards democratic ideals; the factual situation on the ground however, begs to differ. Are the three branches of government in fact separate? Are there checks and balances among the three branches? The answers to these questions will reveal what kind of democracy Myanmar is moving towards.

Torture by law enforcers: are Burma's police the new military?

Danilo Reyes, editor, article 2

This article will look into the practice of torture in Burma by examining individual torture cases recorded from early 2012 to the present, the period described by foreign observers as “springtime” in the areas of political and social change in Burma. Torture cases documented are those committed by law enforcers. Why examine torture by law enforcers or police? Because, in this period the police recorded a large number of torture cases in the course of crime investigations. By looking at police torture, we can better understand the character of Burma's police: are they civilian or military?

In June 2012, months after democratic leader Aung San Suu Kyi and her party won a landslide victory in by-elections, the police arrested a labourer; and the military arrested two cattle traders. They interrogated them on allegations that they were involved in explosions. When the police could not obtain evidence from the labourer, they turned him over to the military to be tortured. Meanwhile, the military forced confessions from two cattle traders before turning them over to police for prosecution.

Three years on, the police and military who colluded in torturing Lahtaw Brang Shawng, the labourer, were never punished (Story No. 10). Similarly, the military who forced confessions and fabricated material evidence on cattle traders Laphai Gan and Baran Yaun, were not punished either. The torture Lahtaw Brang Shawng suffered in custody by the military never had redress. He described it below:

They held the flat side of a hot knife to my face, hit my head with bamboo, stabbed my thighs, and ran a bamboo roller along the back of my thighs. An intelligence officer threatened to kill me, ordering him to dig my own grave.

“Most victims are mostly from poor family backgrounds—they are farmers, labourers and rickshaw drivers who police questioned in absence of a complaint, or arrested without a warrant.”

The police admitted the evidence they have against Laphai Gan and Baran Yaun is only that provided by the military. They have no other evidence against them. They have no witnesses linking them, the accused, to the explosions. But, the false charges against them were not dismissed. They are still being prosecuted by police for crimes based on evidence obtained through torture by the military. Like Lahtaw Brang Shawng, the torture they suffered in military custody never had redress:

They assaulted the victims to the point of drawing blood, tortured and threatened them into admitting to being KIA soldiers. They were forced to kneel on gravel for extended periods, forced simulated or actual homosexual intercourse on them, burning their genitals with candles, and burning their skin with the blade of a hot knife.

In these two cases, in the early period of Burma's political reform, it is evident that for the police and the military, business was as usual. These practices of torture and the nexus between the police and the military thrive to this day. This raises serious questions: has the military's role, if not interference, in law enforcement, ended? Since 2012, amid 'cautious optimism' with Burma's political reforms, the trend of police torture during criminal investigations has increased. Apart from police and military collusion, the torture examined in this report reveals how law enforcers torture suspects during police investigation. Of these cases, five victims died in custody, including two women. Most victims are from poor family backgrounds—they are farmers, labourers and rickshaw drivers who police questioned in absence of a complaint, or arrested without a warrant.

Myint Thwin, a human rights lawyer, says in an *article 2* interview “*We have to fight against unjust laws with just laws*”. He observes that victims are no longer tortured solely for alleged political crimes but for ordinary criminal cases: robbery, petty theft or murder. It means the use and purpose of torture may have changed, but its methods have remained the same whether the victim is a dissident, a political prisoner or alleged criminal. Torture is used in criminal investigations regardless if they are political or not. Therefore, the changes in how and who uses torture are only seen in the uniforms that the torturers wear: military uniforms in the past; police uniforms at present.

During the military regime, Myint Thwin recalls that whether the torture victim was a political activist or not, the military always gave political reasons for using torture. After 2012, the manner in which police torture “is similar to what military intelligence did in the past” even if their victims are not being investigated for political crimes. During the military regime, he recalls how he and other political prisoners—activists, monks, lawyers,—were tortured in custody:



Policemen barricading protestors in Letpadan.

They tortured them by putting needles under the soles of the students feet for several hours, aimed spotlights on their faces, applied electric shocks, beat them with sticks, rubbed rulers on the skin of their front lower legs, hung them upside down. I was tortured in that same way. Others had hot wax poured on their skin or their penises burned with lit cigarette butts.

What Myint Thwin suffered is somewhat similar to how the police and the military colluded in torturing Lahtaw Brang Shawng and Laphai Gan and Baran Yaun. They suffered similar ordeals to Myint Thwin and other political prisoners: their genitals/penises and skin were burnt with lit cigarette butts and hot wax respectively, their bodies pierced by bladed and sharp objects, they were beaten with hard objects, and threatened with death: even forced to dig their own graves.

In the last three years, police torture in Burma has become all pervasive. The Asian Legal Resource Centre (ALRC) in September 2014 submitted a report to the UN Human Rights Council, enumerating the features of the practice of police torture. It notes some of these features as (See Appendix II):

- a. *The practice of torture is systemic. Officials at all levels of the police hierarchy, courts, administration, and hospitals are aware of its occurrence; are involved actively; and are either tacitly complicit or condone it. Superiors do not prohibit the use of torture by subordinate officers...*

“The changes in how and who uses torture are only seen in the uniforms that the torturer wear.”

“ The police commanders routinely request judges to remove the names of the policemen in the criminal complaint.”

- b. *The police often know that the victims of torture are innocent...*
- c. *The practices of torture are highly professionalized. The methods of torture are used by people with extensive knowledge and training in these techniques...*
- d. *The police resort to torture and attendant techniques as other methods for investigation of crimes are undeveloped, basic or non-existent...*
- e. *The judiciary participates in the process of torture. Judges know that people brought before them in court have been tortured, whether brought in for the purpose of giving a confession or retracting a confession...*

One of the examples in which the “police knew the victim was innocent” is the case of Ko Nan Win’s pregnant wife, Ma Than Than Aye. She died in police custody on May 30, 2013. Police questioned her because her husband allegedly stole gold from a house where he had been working (Story No. 6). Ko Nan Win maintained his innocence under torture. When the police could not get any confession from him, they turned to his wife. They interrogated her for the alleged crime against her husband, trying to force her to confess and return the stolen gold.

Why is torture “systemic” and how does the “judiciary participate in the process?” It is demonstrated in the routine practice of police commanders who shield their men from criminal liability purposely to cultivate their loyalty. Of cases documented since 2012, none of the police officers were prosecuted for criminal offences. The case of torture victims Myint Lwin and Ohn Lay in January 2013 reveals the nexus between commanders and their subordinates (Story No. 8). When a case was filed against a police sergeant and four constables, their commander sent a letter telling the judge his men were not criminally liable in civilian courts. The accused policemen were charged with torturing, assaulting and arresting the two victims without a warrant. The judge acquiesced, and dismissed the case against them.

Even if victims succeed in filing a direct complaint, the police commanders routinely request judges to remove the names of the policemen in the criminal complaint. In the case of Thet Peaing Pun, he was arrested and tortured for reasons (Story No. 3) as the police told him “he should already know.” The Myanmar Police Force wrote letters to the court telling it to remove the names of the police officers. The judge complied.

Not only do court judges obey police instructions, but the newly established Myanmar National Human Rights Commission (MNHRC), also thinks that once the accused policemen are imposed with administrative sanctions, no further actions are required. This reasoning was questioned by the Asian Human Rights Commission in its statement dated June 1, 2015. It argues that disciplinary sanctions cannot erase criminal actions, and the law used to impose punishment is not a criminal law:



Police van outside court.

...these methods of disciplinary punishment by the police force are designed and implemented so as to encourage impunity for egregious violations of people's rights. Rather than have the cases investigated and tried through the ordinary criminal process, the home affairs ministry is using internal disciplinary methods to deny victims and their relatives the justice that they seek.

“There was no clean break. They only perpetuate the continuation of the military regime.”

However, for judges to accept what the police or the military instructs them to do is a continuing order of the day in Burmese courts. After 2012, Myint Thwin claims there are emerging courageous judges; however, those who take a stand suffer reprisals. If a judge poses a threat by exposing torture by the police establishment, he would be replaced by another judge. It happened in the case of Lahtaw Brang Shawng. The judge refused to record his confession after he discovered that the victim's body had traces of torture and he was wearing a police recording device. He was replaced the next day by another judge.

In deciding cases in court, if the government and the military's interests are at stake, as Thein Than Oo, a practicing lawyer in Burma, told *article 2* in an interview “*The military, not the court decides*”. It is the military who decide the outcome of a case. He said if “the government or military has an interest in the case there will be no justice.” Asked if judges could decide cases independently, he said: “No, they cannot. We can't get an (independent judgment).”

“The impact of militarized policing in the society is so destructive and deep that almost every citizen does not know the basic law or constitutional law.”

Thein Than Oo, of Myanmar Lawyers' Network, described in his article *"The legacy of dictatorship in Myanmar's judicial system,"* that the problem the judiciary faces is the "legacy of dictatorship." However, in my opinion the term "legacy" means something the military regime has ended. Only residues of the past are being tackled. But the term "legacy" could be misleading, as Min Lwin Oo describes in his article, *"Myanmar: Ruling under militarised police,"* since the structure of the military regime remains intact. Only their uniforms change to give the semblance of civilian rule. So, how do we interpret the police as law enforcers in present day Burma?

For Min Lwin Oo, it is still the "military regime (and) not the civilian government" that rules Burma. There was no clean break. They only perpetuate the continuation of the military regime. The police as an institution are still "under the command" of the military" operating "almost the same" as the military. It explains how and why even the methods of torture used are similar to the military regime. The mindset of the police is similar to the mindset of the military. They think they are responsible only to their commanders. It does not matter if they commit crimes or even severe crimes, the commanders will protect them from criminal liability.

Take Ko Zin Aung's case (Story No. 2). He died hospital. His death was passed on as one due to alcoholism, despite having been tortured and subjected to custodial investigation on July 2014 on false charges of stealing bottles of petrol. Then there is the case of U Than Htun (Story No. 7), whose death in custody is blamed on himself for "hitting himself while in police custody" in May 2013. In the case of Myo Myint Swe (Story No. 9), he was tortured to death in police custody on July 2012, but the police colluded with a doctor to certify that he had died from a "heart attack." And, 19-year-old Nan Woh Phan died in custody after she fell from a building after being interrogated for days (Story No. 12).

When the police in Burma instruct the court to exclude names of policemen from criminal cases, they are not seen as interfering in judicial matters. To them, administrative sanctions on erring police officers under the Myanmar Police Force Maintenance of Discipline Law are sufficient. It is the punishment. To tell the judge to do their bidding is a matter of exercising their authority. It seems there is no distinction between the legal process for administrative and criminal liability. The police are the judge. They are the ones who interpret the law, not the judge sitting in courts.

Thus, Min Lwin argues that for lower ranking police commanders or the police establishment to behave in this way should not be a surprise. According to him, even the country's chief of police (a former military officer), apparently "does not know or understand the law and its procedures-practically or theoretically." His experience and training as the police chief is in the ways of the military, not as a civilian police officer. The impact

of militarized policing in the society is so destructive and deep that “almost every citizen does not know the basic law or constitutional law.” In the past, it was the military who interpreted the law, and it is still so today: the military, but in a police uniform.

The challenge is: how can rights be protected when law enforcers outright ignore or do not understand rudimentary procedures of law? Some of the pro-democracy Parliamentarians suggest this: embed the idea of the rule of law in the consciousness of the law enforcers and their commanders, to shift their thinking that they are liable to civilian rule. Things could then change.

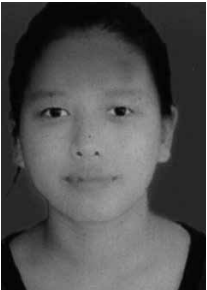
Dr. Aung Moe Nyo, a member of the Parliament (Pyithu Hluttaw), told *article 2* in an interview “*To sign Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment depends on who holds the real power*”. A policeman must understand the distinction between a policeman and a military man. The police, unlike the military, are not supposed to just follow orders from their commanders. They are to adhere to the ideals of the “rule of law” in enforcing the law. Police must begin to see their investigations “from the perspective of the rule of law.”

Dr. Aung Moe Nyo, the main proponent of legislation urging Burma to sign the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, said “if an accused breaks the law, he must be prosecuted. If not, he must be set free.” He hopes the pro-democracy candidates will win in the upcoming elections in November 2015. “If the new government that represents the civilians comes into power,” he said, Burma could sign the Convention.

“A policeman must understand the distinction between a policeman and a military man.”

Twelve stories of torture cases in Burma, 2012-15

Burma Desk, AHRC



Maran Lu Ra



Tangbau Hkown

Story 1: Volunteer teachers sexually assaulted and killed inside a church compound

Names of victims: Maran Lu Ra, 21 and Tangbau Hkown Nan Tsin, 20

Date of incident: 19-20 January 2015

Place of incident: Kaung Kha village, Kutkai Township, Northern Shan State, Myanmar

AHRC-UAC-005-2015

On 20 January 2015, two young volunteer school teachers were found dead in their rooms at the Baptist Church in Kaung Kha village, in the Northern Shan State. The two young women, Maran Lu Ra and Tangbau Hkown Nan Tsin, were ethnic Kachin teachers volunteering for the Kachin Baptist Church and had served in Kaung Kha village for two years before they were killed. Their bodies were found by villagers in their room in the dormitory inside the church compound.

The villagers found the bodies bloodied, bearing signs of having been beaten with a blunt instrument. One of the girls had knife wounds on her face and hands. Both women were found naked indicating they could have been sexually assaulted or raped. Their room was in disarray and one of the victim's hands had strands of hair suggesting a struggle with the perpetrators. A large, bloodstained stick was found near the bodies.

The bodies have been sent to a hospital in Muse for autopsy, but the reports are yet to be published by the Judicial Medical Officer. On the basis of information received from a nurse, it is reported that the doctors found sperm inside the bodies of the victims, and that the specimens needed to be sent to a hospital in Lashio for further investigation.

A few days before the women were killed, an Army battalion had arrived. They were camped 100 metres from the scene of the crime where the women were attacked and killed. While there is no record of them harming these villagers before, the Burmese Army has been accused of perpetrating sexual violence in conflict areas elsewhere. As a result of their reputation and proximity to the crime scene, many people suspect the perpetrators are Burmese soldiers.

Kaung Kha village with some 25 houses is located near the border of the Kachin State. The Burmese military columns pass through the village whenever conflict arises between the army and ethnic Kachin militants.

Story 2: Man falsely accused of theft dies in police custody

Name of victim: Mr. Ko Zin Aung, 37, son of U Thaung Shwe, resident of No. 7-59, Myo Thit D Quarter, Ywar Ma Road, Bago Township, Bago Region

Names of persons involved:

1. Police officer Yan Naing Aung, Bago No.1 Police Station
2. Constable Myint Zaw, Bago No.1 Police Station
3. Ko Zaw Gyi, accuser

Date of incident: 4th to 7th July 2014

Place of incident: No.1 Bago Township Police Station, Bago Township, Bago, Myanmar

AHRC-STM-153-2014, AHRC-UAC-110-2014-02



Ko Zin Aung

Ko Zaw Gyi, who sells fuel for motorcycles at the roadside, accused Ko Zin Aung, a rickshaw driver, of stealing bottles of petrol from his shop. At 8 a.m. on 4 July 2014, police officer Yan Naing Aung and constable Myint Zaw arrested Ko Zin Aung without an arrest warrant and without notifying an administrative officer. They handcuffed him and took him to Bago No.1 Police Station, where he was detained for three days without a court order. During this period, they tortured him. No case was filed against the victim in court.

On 7 July 2014, Ko Zaw Gyi called the victim's brother-in-law, Ko Moss, by phone. Ko Zaw Gyi said the police would send Ko Zin Aung to court and file a case against him, but as the victim was not feeling well they would first send him to Bago General Hospital (BGH). Ma Aye Aye Nwe, the victim's cousin, together with Ko Moss, went to BGH and found Ko Zin Aung in bed, suffering from spasms. His face, his hands, his back, and his chest were covered with bruises. Ko Zin Aung was in a critical condition.

Ko Zaw Gyi gave 5,000 kyats (\$5 USD) to Ko Moss for medical expenses, and 10,000 kyats (\$10 USD) to the police to close the theft case. As Ko Zin Aung's condition worsened, around 8:30 p.m., Ko Moss called Ma Aye Aye Nwe telling her to come to the

hospital. Before she arrived, Ko Zin Aung died. In the criminal report, the Forensic Doctor indicated that the victim had died from alcohol poisoning. It is obvious that Ko Zin Aung was tortured in police custody, as can be seen in photos that the family took before the postmortem. Before the police arrested him, he was strong and healthy.

On 18 July, Ma Aye Aye Nwe sent complaint letters to Major General U Win Khaung, Ministry of Border Affairs Head Office, Naypyitaw; Bago Regional Police Commissioner U Mya Win; Bago Regional Minister for Border Affairs Major U Thet Tun; and Bago No.1 Police Station, with photographic evidence of the torture inflicted on her cousin.

The Bago No.1 Police Station replied to the complaint letter on 23 July, claiming that they were sending the case to Bago Township Court under criminal miscellaneous case No.15/2014. On 28 July, three police officers, led by one Police Captain from Waw Police Force, came to Myo Thit Quarter Administrative Office to question Ma Aye Aye Nwe and two others witnesses about what had happened and what they saw.

Although Ko Khin Moe, one of the witnesses, said Ko Zin Aung used to have a few drinks every day after he came back from work, the policewoman who was documenting the case noted that Ko Zin Aung was an alcoholic and drank every day. The team printed the document at Bago No.1 Police Station and returned to get a signature on the document. When the witnesses found that some words in the document were not what they said, they asked for it to be corrected. But, the police refused and forced them to sign. The witnesses were afraid of the police. So they signed the papers.

Story 3: Court removed names of a municipal officer and policemen who tortured a villager from a criminal complaint

Names of victims:

Thet Paing Tun, 19, resident of Paybingyi village, Kangyi Daunk Township

Names of persons involved:

1. U Htay Hlain, 100 household head, Paybingyi village, Kangyi Daunk Township
2. U Zaw Min Htwe, village administrative officer, Paybingyi village, Kangyi Daunk Township
3. U Tun Tun Win, police officer, Kangyi Daunk Police Station Head
4. U Lin Aung, Police Corporal, Kangyi Daunk Police Station
5. U Lin Lin Zaw, Police Lance Corporal, Kangyi Daunk Police Station

Date of incident: 2 July 2014

Place of incident: Paybingyi village, Kangyi Daunk Township, Ayeyawady Region, Myanmar

Cases (against victim): Criminal Case No. 200/2014, Kangyi Daunk Township Court. The case has been dismissed without any charges.

AHRC-UAC-142-2014

On 2 July 2014 around 2 p.m., Thet Paing Tun, who lives in Paybingyi village in Kangyi Daunk Township, was returning from the paddy field where he works. He stopped to watch a billiards game in the village. While he was there, U Htay Hlaing, a 100 household head (a municipality officer), and two other men arrived. They proceeded to handcuff and arrest Thet Paing Tun. When Thet Paing Tun asked them why they were arresting him, they told him that he should already know what he did wrong, but nothing more. Then, they brought him to village administrative officer U Zaw Min Htwe's office. When he reached to the administrative office, he again asked why he was detained, but he got no answer. One police officer took off his shoe and struck Thet Paing Tun's cheek with it four or five times. When Thet Paing Tun begged the police not to hit him, the other policeman kicked him in the back several times. As they attacked him in this manner, he coughed up blood. Later, when administrative officer U Zaw Min Htwe saw the blood, he told the police to remove the handcuffs. Then, the household head U Htay Hlaing and U Zaw Min Htwe forced the victim to bow to them and finally released him.

After Thet Paing Tun reached home, he experienced chest pain. His family took him to Pathein General Hospital, where he stayed for 6 days before being discharged. On 7 July 2014, his mother tried to lodge a case against the perpetrators in Kan Ywar Police Station. However, station head police officer Tun Tun Win refused to open a case. The officer apologised on behalf of the perpetrators and offered 10,000 Kyats (\$10 USD) for medical expenses. Thet Paing Tun's mother did not accept the money.

When the police station refused to accept the case, the victim opened a case by direct complaint to Kangyi Daunk Township Court. During the trial process, Kangyi Daunk Township Police Station submitted a letter dated 18 September 2014 that the Myanmar Police Force punished the police who were involved in the crime under Section 22 of the Myanmar Police Force Maintenance of Discipline Law. They requested to have their names removed from both the court record and the criminal case file and the court did so.

On 2 October 2014, the court decided to dismiss the case. It said that it could not find evidence that the household head and administrative officer had been involved in beating the victim, and that the police had been punished in accordance with the Myanmar Police Force Maintenance of Discipline Law.

Story 4: Torture of a 13-year-old boy

Names of victims: Soe Lin, now 14 years old

Residents of Nawaday Road, Myayatana Quarter, Myaung Mya Township, Ayeyawaddy Region, Myanmar

Names of perpetrators:

Police Inspector Kyawt Han

Other police personnel from Myaung Mya Police Station

Date of incident: 23 July 2013 (date of arrest) to present

Place of incident: Myaung Mya Township Police Station, Ayeyawaddy Region, Burma

AHRC-UAC-119-2014

Soe Lin is unable to walk without assistance because of torture by police personnel in Myaung Mya Township Police Station. On 23 July 2013, one U Kyaw Wai was murdered in the Aung Pan salt factory where he worked. Soe Lin and his father were accused of murdering the man and were arrested that day. A few days later, Soe Lin's mother and 9-year-old sister were also arrested and taken to the police station for interrogation. The mother and daughter remained in custody for two days.

For almost three weeks, Soe Lin and his father were not allowed to meet with family or relatives. In all, the police detained Soe Lin and his father for one month without a warrant or court order. The police interrogated Soe Lin in custody and attempted to get him to admit that he killed the man. He denied killing anybody, talking with the man, or visiting his house. After questioning him for three days he continued to maintain his innocence, so they began torturing him.

The methods of torture used on the boy included using a lighter to burn his face around his eyes, burning his fingers with cigarettes causing his fingernails to fall off, forcing him to kneel on coarse gravel for an extended period of time, denying him food and water, holding his head underwater, and various beatings that eventually caused bleeding from his ears and blood in his urine. This torture continued for a month and was conducted at least in part by Township Police Commander Inspector Kyawt Han. As a result, the victim is having difficulty breathing, walking, and relieving himself.

When Inspector Kyawt Han filed the case against Soe Lin, he wrote the boy's age as 16 even though he knew that the boy was 13 years old. During the court hearing, the headmaster of the boy's primary school came to court to prove the boy's real age as 13 years and 10 months old. Because the boy is a minor, the case was transferred to a juvenile court in Ein-me Township and he has been released on bail.

According to his clinic doctor, the boy cannot even stand on his own due to pain in his lower vertebra and pelvis. The doctor said that the government should provide medical treatment at

a hospital for the boy because he was harmed while in custody. However, the government has not offered any such treatment.

Story 5: Assault and inhuman treatment of a group of transgender people

Name of victim: Eleven persons

Date of incident: 7 July 2013

Place of incident: Outside the Sedona Hotel in Mandalay, Myanmar

Alleged perpetrators: About 20 men in civilian dress—some police, local administrators or unidentified persons

On 7 July 2013 a group of some 20 men in civilian dress—some police, local administrators or other unidentified persons—descended on the area outside the Sedona Hotel in Mandalay. They assaulted a group of gay and transgender people there. There was pushing, hitting, handcuffing, and pulling off their garments in public before loading them into a number of vehicles.

Once in custody, police continued to abuse the 11 detainees. Physical and psychological demeaning behaviour included: constant hitting and kicking, stripping them naked in the public areas of the Mandalay Regional Police headquarters, photographing them, forcing them to hop like frogs, making them clean shoes and tables, walk up and down as if on a catwalk, and uttering obscenities at them. One of those detained said that a police officer interrogated her at length about her sexual activities and preferences, where she usually hangs out. Later he tried to lure her to come with him after leaving the police station.

Although many of those detained were released without charge, some have been threatened, and others charged under the 1945 Police Act, section 35(c). This Act stipulates that, “Any person found between sunset and sunrise having his face covered or otherwise disguised, who is unable to give a satisfactory account of himself... may be taken into custody by any police-officer without a warrant, and shall be punishable on conviction with imprisonment for a term which may extend to three months.”

In one case, two accused each had to pay bribes of around 400,000 Kyat (about USD420) to be released from a case under this section lodged by the police in the Aungmyay-thazan Township Court. They were informed that for a lesser amount of money they could be held for just one week instead of the full three-month period. Equally disturbing is that some of those who are being released are being forced to sign pledges beforehand that they will not go to public places as they previously did or wear women’s clothing.

Some of the gay and transgendered people detained and tortured in Mandalay intend to lodge complaints against their abuse with the authorities, including the Myanmar National Human Rights Commission.

Story 6: Torture of a couple for allegedly stealing gold



Ma Than Than Aye

Names of victims:

1. Ko Nan Win, husband of second victim, aged 26
2. Ma Than Than Aye, wife of first victim, deceased at age 28, while two months pregnant

Residents of Thabyebin Village, Bassein Township, Ayeyawady Region, Myanmar

Names of persons involved:

1. Inspector Kyi Lin, station chief, Thinbawgyin Police Station, Pathein
2. Sub-Inspector Naing Aung Kyaw, crime investigator, Thinbawgyin Police Station
3. Police Sergeant Kyi Lin, Thinbawgyin Police Station
4. Police Corporal Ne Htun, Thinbawgyin Police Station
5. Police Corporal Zaw Min Htun, Thinbawgyin Police Station
6. Police Lance Corporal Kyaw Lin Naing, Thinbawgyin Police Station
7. Police personnel at the Bassein Township Police Headquarters (Myetto Camp) & Athegyi Camp
8. Dr. U Myint Aung

Date of incident: 30 May 2013 and subsequently

Place of incident: Ayeyawady Region, Myanmar

Case details (against victim):

1. Criminal Case No. 1619/2014, Bassein Township Court, Penal Code section 380, case brought by Daw Myint Myint, acquitted on 30 July 2014, Township Judge U Aung Myin presiding

AHRC-UAC-128-2014, AHRC-STM-080-2015

At the end of May 2013 a police unit arrested Ko Nan Win after a quantity of gold went missing from a house where he had been doing work in his village in Bassein, a part of Burma's delta region. The police allegedly tortured him to admit to the crime, including stringing him from a beam and kicking and punching him. When he refused to admit guilt, a policeman said that they would kill him. He said he would not let the police kill him and then attempted to commit suicide by using a sharp instrument on his throat.

The police made no progress in the case against Nan Win, so, on June 11 they arrested his wife, Ma Than Than Aye, for alleged involvement in the crime. They interrogated her at a number of locations until June 17, allegedly torturing her. Throughout this time both she and her husband were held illegally while their relatives were refused access to them.

Then on June 17 the police took the wife, Than Than Aye, by boat to search for the hidden gold. They reportedly looked in three locations and recovered nothing. According to witnesses, at the time of the search a police officer leading the unit, Sub-Inspector Naing Aung Kyaw, kept beating her.

On their return, as the group was nearing Bassein around 7pm on June 17 it was dark. Then, Than Aye, who was two months pregnant, allegedly jumped from the vessel on the Ngawun River and drowned. After Than Aye's body was recovered, clear photographs taken show that her hands were cuffed behind her back, one leg was cuffed and chained. This casts doubt on the police story that she would dive into the water when unable to swim.

Subsequently, due to lack of evidence against Ko Na Win, the Bassein Township Court acquitted him.

After an investigation by higher officers, action was taken against the police involved under a disciplinary law. Sub-Inspector Naing Aung Kyaw was suspended from his post and given a one-year custodial sentence. His subordinates were all demoted one rank.

Story 7: Police claim a man in their custody died by hitting himself

Name of victim: U Than Htun, 42, resident of Kyar Inn Block (New), Dandalun Tract, Pandaung Township, Pyay District, Bago Region, Myanmar.

Names of persons involved:

1. U San Lin, Chief, Pandaung Township Police Station
2. Sub-Inspector Nay Lin Aung
3. Sub-Inspector Aung Naing
4. Sub-Inspector Hla Min
5. Constable July Moe

All of Pandaung Township Police Station

Date of incident: 22 May 2013

Place of incident: Pandaung Township Police Station, Pyay, Myanmar

Court cases:

1. Post-mortem inquiry: Criminal (Minor) Case No 27/2013, Pandaung Township Court (Nan Yin May, Township Judge), order passed 12 July 2013; Criminal Revision Case No 249 (A)/ 2013, Bago Region High Court (Kyi Thein, Judge), order passed 7 October 2013
2. Application for prosecution of police: Criminal Case No 238/2013, Pandaung Township Court, application rejected 28 May 2013; Criminal Revision Case No 48/2013, Pyay District Court (Hla Thein, Deputy District Judge, Pyay District Court), application rejected 10 July 2013

U Than Htun was tortured to death while detained in police custody in Pyay, Myanmar. Although, the police officers claimed that the victim died from hitting himself with an iron pole during interrogation due to the effects of alcoholism, the doctor confirmed that none of the organs of the deceased were in a condition that would cause his death. The post mortem examination showed that the skin on his two wrists was ripped open due to prolonged handcuffing. Death was caused by Haemothorax-bleeding inside the lung caused by broken ribs on his right side and trauma.

Due to the death, the victim's wife, Daw Myint Htay, opened a case against the commander of the police station. Her complaint was lodged at the Pandaung Court. The judge issued an order saying that they have not obtained a permission from the higher authority to sue the police, and dismissed the complaint. She also applied to the Pyay District Court. They handed down the same decision as the Pandaung Court, dismissing her case on the same day that she applied.

Meanwhile, the township court also conducted a post-mortem inquiry under criminal procedure. It found that there was not enough evidence to show that the death was unnatural. But, in the Bago Region High Court, the judge overturned the order. He said that the death was not natural and that it had been caused by someone.

Although the high court gave a decision that the death was not natural, it did not give any order for action by the lower courts or the police. In the end, there was no action taken on the case at all.

Story 8: Court obeys police order to dismiss charges against police torturer

Names of victims:

1. Myint Lwin
2. Ohn Lay

Both residents of Pyin Bon village, Nattalin township, Bago Region, Myanmar

Names of persons involved:

1. Police Sergeant Kyi Soe Tun, Serial No. La/181198, Pyin Bon police post, under Taung Nyo Police Station, Nattalin Township, along with 4-5 other police personnel, as follows
2. Constable Tin Tun Aung
3. Constable Win Naing Tun
4. Constable Nay Myo Aung
5. Constable Zaw Win Htut

6. U Win Soe, head, General Administration Department, Pyin Bon Village, Nattalin Township
7. U Ye Aung, head of ten-households, Pyin Bon Village, Nattalin Township
8. U Tin Win, head of ten-households, Pyin Bon Village, Nattalin Township

Date of incident: 7 January 2013 (date of arrest)

Place of incident: Pyin Bon village, Nattalin Township, Tharyarwaddy District, Bago Region, Myanmar

Case details:

1. Criminal Case No. 63/2013, Nattalin Township Court, Penal Code section 323/114, Nattalin Township Court, against the police, case closed 28 March 2013
2. Criminal Appeal Case No. 19/2013, Thayawaddy District Court, appeal dismissed on 10 June 2013
3. Criminal Revision Case No-/2013, Bago Region High Court
4. Writ of Certiorari lodged in Supreme Court

AHRC-UAC-003-2014

On 7 January 2013, four policemen from Taung Nyo Police Station together with Police Sergeant Kyi Soe Tun and U Win Soe, head, General Administration Department, Pyin Bon Village, Nattalin Township assaulted, handcuffed and arrested Myint Lwin and Ohn Lay in Myint Lwin's house around 7pm without any warrant or a complaint. According to Myint Lwin's brother, Kyaw Lwin, when he asked the police not to assault his brother, the administration head threatened to arrest him too.

The police say that they had to take down the two men roughly because they resisted arrest. It was said that Myint Lwin threatened them with a knife. Both were detained illegally for 17 days. Following this, the Nattalin Township court imposed a movement restriction order of six months on the two villagers.

Kyaw Lwin sued Police Sergeant Kyi Soe Tun along with 4-5 other police personnel and U Win Soe for harming his brother. Nattalin Township Court opened the case and started to examine it. A decision was made by the judge to hear the case under Penal Code sections 323/114. But, the commander of Nattalin Township Police sent a letter to the court. He said that as the accused are police officers, action should be taken against them under the Police Maintenance of Discipline Law. Therefore, the Nattalin Court decided not to continue to examine and closed the case on 28 March 2013.

The plaintiff was not satisfied with the decision of the Nattalin Township Court because the Police Maintenance of Discipline Law is not a criminal law. He made appeals to the higher courts but so far has not been successful. Currently, the case is with the Supreme Court.

Story 9: Man dies in police custody

Name of victim: Myo Myint Swe (alias Kalar Gyi, Pyi Soe, Hnin Si), 39, carpenter and labourer, resident of New Dagon (East) Township, Yangon

Names of persons involved:

1. Sub-Inspector Tin Naing Zaw, Bayinnaung Police Station (investigating officer), Yangon
2. Inspector Ngwe Soe, Commander, Bayinnaung Police Station (inquest officer)
3. Police Lieutenant Colonel Myo Aung, Commander, Northern District Police Force, Yangon
4. Police Captain Kyaw Zin Win, Commander, Mayangone Township Police Force, Yangon
5. Doctor Ye Win, Crimes Doctor, Insein Hospital

Date of incident: 5 July 2012

Place of incident: Top floor of Mayangone Township Police Station, Yangon, Myanmar

Death inquest: Criminal Miscellaneous Case No. 161/2012, Mayangone Township Court, Township Judge Daw Aye Mya Theingi presiding

AHRC-UAC-176-2012, AHRC-UAU-010-201

On 8 July 2012 Myo Myint Swe was tortured to death during interrogation while in police custody in Yangon, Myanmar. Police informed his family that his death was due to illness. The doctor who conducted the post-mortem recorded that he had died of a heart attack. However, the family found out that he had been tortured. They are appalled that the doctor is conspiring with the police to prevent a criminal case being opened against the killers.

When the death inquest was held in court, it was registered as a natural death, not as a murder. But, the inference of the court that the death was unlikely to have been from natural causes leads to the conclusion that someone was responsible for this death.

The Myanmar Police Force took action against the officers involved in the murder under the Myanmar Police Maintenance of Discipline Law, enacted on 26 April 1995. According to an article in The Daily Eleven News, in May 2013, three police officers were dismissed and five others were demoted and detained, and one, who was not identified in the news article, was transferred to another station.

The victim's family members do not know where the accused were sent or what punishment they received. In addition, the Yangon Regional Parliament sent a letter to the Chairman of the National Parliament referring to the Public Complaint and Appeal Committee's letter on this case. Contents of this letter explained that the officers who tortured Myo Myint Swe had been punished under the Myanmar Police Maintenance of Discipline Law.

No further legal action has been taken according to the criminal law of the country. Although the victim's family have made complaints to all the ministries concerned with the case, they have received no information at all.

Story 10: A court judge replaced for refusing to record a forced confession

Details of victim: Lahtaw Brang Shawng, 25, daily wage labourer, father of three children residing in building 2 of the Jan Mai Kawng relief camp for internally displaced people affected by fighting in Kachin State, Myitkyina

Details of alleged perpetrators: Number 1 Police Station chief, Myitkyina Township, Ward Officer U Maung Maung; Captain Kyaw Swa Lin, Military Affairs Security; Police Sub-Inspector U Aung Mya Than, attached to district police command, and other police and military intelligence personnel

Date of arrest: 17 June 2012, 9pm

Details of case brought against victim: Myitkyina Township Court, Criminal Case No. 1199/2012, case brought by Captain Kyaw Swa Lin, Judge U Myint Htoo presiding; charged under section 17(1) of the Unlawful Associations Act, 1907; first hearings on 4 and 11 July 2012

AHRC-UAC-132-2012

On the night of 17 June 2012 a group of ten men led by a police station chief and a civilian official came to a relief camp for people affected by armed conflict in Kachin State and told Lahtaw Brang Shawng that they needed to question him over three explosions. They handcuffed him and took him away, promising to let him go in 24 hours if they were satisfied that he had no involvement in the crimes. Instead, they sent him to a military intelligence facility where he was held incommunicado and severely tortured.

The methods of torture allegedly used included holding the flat side of a hot knife to his face, hitting his head with bamboo, stabbing his thighs, and running a bamboo roller along the back of the thighs. Brang Shawng said that an intelligence officer threatened to kill him, ordering him to dig his own grave.

On June 20 officers brought Brang Shawng back to the relief camp to force him to do a re-enactment of the crimes to be used against him in court. People who saw him at the camp said that he had visible injuries, including bruises and swelling all over his body.

After one week Brang Shawng's case was brought to court for the first time, where a judge remanded him in custody. On June 28, he was brought to court to make a confession with the same judge. When the judge saw that Brang Shawng had a black eye,

he asked him how it happened. Brang Shawng replied that he had fallen from a motorcycle. Because it did not look like a motorcycle accident injury, the judge asked him to lift up his shirt where he saw that a recording device had been taped to the defendant's body. He had photographs taken of the device and then refused to record a confession.

This was an obvious effort to set up a confession, ensuring that the defendant told what he had been tutored to tell the judge. On the next day, officials brought Brang Shawng back to court. A new judge was on the bench and recorded the confession. Brang Shawng was then confined in the town prison in solitary confinement.

Members of a church group that visited him have called for his release. The armed group with which he is supposed to be involved, the Kachin Independence Army, denied his affiliation.

Story 11: Soldiers torture cattle traders they suspect as rebels

Names of victims:

1. Laphai Gan, currently detained in Myitkyina Prison, Kachin State, Myanmar
2. Baran Yaun, currently detained in Myitkyina Prison

Names of persons involved:

1. Inspector Thein Win, station chief, Police Station No. 1, Myitkyina
2. Inspector Ye Lwin, Police Station No. 1, Myitkyina
3. Sub-Inspector Kyaw Myo Naing (investigator)
4. Inspector Aung Mya Than (investigator)
5. Sub-Inspector Myo Win Naing (investigator)
6. Sub-Inspector Win Shwe (investigator)
7. Inspector Yan Aye
8. Captain Soe Paing, Military Affairs Security platoon, Northern Command HQ, Myitkyina, and personnel
9. Personnel of Infantry Battalion (IB) 37 and People's Militia

Date of incident: 9 June 2012 to the present

Place of incident: Myitkyina, Kachin State, Myanmar

Case details (against victims):

1. Criminal Case No. 1213/2012, Myitkyina Township Court, under section 17(1) of the 1908 Unlawful Associations Act, sentenced to two years in prison on 15 November 2013, Township Judge Myint Htoo presiding; Criminal Appeal No. 126/2013, Myitkyina District Court; Criminal Revision No. 27/2014, Kachin State High Court; Criminal Revision No. 275(b)/2014, Supreme Court, all applications for appeal and revision denied
2. Criminal Case No. 200/2012, Myitkyina District Court, under section 3 of the Explosive Substances Act, sentenced to five years in prison, Deputy District Judge Ne Lin presiding

AHRC-UAC-137-2014

On 9 June 2012 patrolling army troops and paramilitary personnel arrested Lahpai Gan and Baran Yaun near Talawgyi Village on a general suspicion. They, along with three cattle traders, were having lunch, taking a break from driving cattle. Recently there had been a battle in the area with members of the Kachin Independence Army (KIA). The troops took the men back to the village, assaulted them and detained them in the Buddhist monastery compound. After three days, they took them by boat at night, to the Talawgyi Police Station, and from there, to Myitkyina, the capital of Kachin State.

On June 14 Captain Soe Paing of military intelligence took charge of the men. At the army's Northern Command Headquarters he had them assaulted to the point of drawing blood, tortured and threatened into admitting to being KIA soldiers. Methods of torture used included techniques commonly reported in Myanmar. They included common assault, being forced to kneel on gravel for extended periods, forced simulated or actual homosexual intercourse, burning of genitals with candles, and burning the skin with the blade of a hot knife. A particular method was developed for cases concerning Kachin people accused of involvement in the KIA. It involved using a stress position where the detainee is forced to stand imitating Christ crucified on the cross since Kachin are predominantly Christian.

After the three traders were released, on the basis of illegal detention and interrogation, Captain Soe Paing, on 26 June 2012, handed the other two men over to the police. They were taken to the Kachin State Police Reserve Force premises where they were interrogated further. Subsequently, Inspector Ye Lwin lodged a case in court, for being members of an unlawful association, against Lahpai Gan and Baran Yaun and four other men. Two of the four had also been detained in Talawgyi and tortured by military intelligence, and two were not in custody.

Then, in the six months that this case was being heard, another police officer, Inspector Thein Win, opened a second case against Lahpai Gan and Baran Yaun over a mine blast outside the Myitkyina district office, causing damage to property but no casualties. Although his investigation had found five other men responsible for the crime, he had failed to detain any of them and prosecuted these two accused in their stead.

In court, a police witness for the prosecution, Inspector Yan Aye, acknowledged under cross examination that the police had no eyewitnesses to the bombing, and had no evidence to link the two accused men to the crime. They had based their case exclusively on information supposedly obtained during illegal detention and interrogation in the army HQ. Furthermore, the defendants showed the court their scars due to injuries suffered while being tortured. Nevertheless, the court accepted the evidence obtained through the use of torture in illegal detention, in violation of the Evidence Act and Criminal Procedure Code. They released

the two other detained accused and convicted Lahpai Gan and Baran Yaun.

The two men have maintained their innocence throughout and have appealed to successive courts to have their convictions overturned but the case has not been reheard in any court.

Story 12: A 19-year-old woman falls off the building while in custody

Names of victims:

1. Nan Woh Phan, aged 19, died in custody
2. Namase Motohiko, a Japanese national and partner of the deceased

Date of incident: 24 March 2012

Place of incident: Kyauktada, Yangon, Myanmar

Alleged perpetrators: Officers attached to the Bureau of Special Investigation

AHRC-STM-124-2012



Nan Woh Phan -
courtesy from Irrawaddy
& Yangon Press
International.

On 24 March 2012, the Bureau of Special Investigation--an elite semi-autonomous agency under the home affairs ministry, held Woh Phan for questioning at its offices in Kyauktada. It concerned the alleged illegal land and real estate speculation of her partner, a Japanese national. He had conducted transactions with her name on the title deeds. Around 5pm on that day, while in BSI custody, the 19-year-old fell from the fifth floor of the premises and died.

On March 28, Nan Woh Phan's partner, Namase Motohiko, and lawyer Daw Ei Ei Aung conducted a press conference in which they explained that the BSI had taken Nan Woh Phan on March 21 and had her under continuous interrogation until the day of her death. According to Namase, the BSI had allowed the teenager only two hours sleep per day and had exhausted and psychologically traumatized the young woman as part of their interrogation techniques. The lawyer said that her client had been terrified, had stopped eating and could not even drink water without vomiting. Ei Ei Aung was present when Nan Woh Phan died but said that she could not ascertain whether she fell by accident or jumped deliberately from the building.

Although a special investigatory tribunal had supposedly been established to investigate the case, news of its progress has not been forthcoming. On the other hand, the investigations against Namase continued, and in May, the BSI also arrested and detained him on remand, under section 5(h) of the Emergency Provisions Act, 1950, over alleged tax evasion. On May 17, officer U Than Aye of the BSI opened a case against Namase (Hlaingthayar Police Station, No. La(Pa)521/012). The Emergency Provisions Act is a law that authorities use in politically motivated cases. He was later released.

The Legacy of Dictatorship in Myanmar's Judicial System

Thein Than Oo, Myanmar Lawyers Network

"Myanmar is a country in which the rule of law is lexically present but semantically absent." (Nick Cheesman- Opposing the Rule of Law).

The above remark by Nick Cheesman, a Research fellow at the Department of Political and Social Change, Australian National University, is a bleeding truth. Myanmar has a prolonged history of civil war and racial conflict. For nearly a decade of consecutive military "Reign of Terror", the Myanmar people have suffered extrajudicial killings, arbitrary detention, disappearances and have become IDPs. After some semblance of recent political reform, and five months ahead of the nationwide election, many activists have been jailed, and journalists are facing great pressure, with many charged or sentenced to long prison terms. Nevertheless, the United States continues to praise the Thein Sein government as 'Democratic Reformers', while ignoring their iron-handed rule. The European Community has also jumped on this bandwagon. No one is asking whether the country's judicial system is independent, or whether the courts are still used as the junta's tool of oppression. It is undisputed however, that under Myanmar's military government, the judicial system is seriously corrupted and there is no rule of law.

Nowadays, 'Rule of Law' is the favorite slogan of the government as well as the so-called opposition. Myanmar political leaders, from Hluttaw speaker Shwe Man to opposition leader Aung San Su Kyi, have called for judicial independence and rule of law reform. At the beginning of 2011, the 2008 constitution came into force. According to section 11(a) of the constitution, the three branches of sovereign power, namely, legislative power, executive power and judicial power are separated, to the extent possible, and exert reciprocal control, checks and balances among themselves.

Nevertheless, the judiciary is still under the influence of administrative power. In 1991, under the reign of military intelligence chief Lieutenant General Khin Nyunt, a Burma Law



At front row: Naw Own Hla (extreme left) and Nay Myo Zin (third from left), are two of the six activists who were sentenced to four years and four months imprisonment on May 15, 2015. They were charged for attempting to protest at the Chinese Embassy in Rangoon over the deadly police crackdown at the Letpadaung copper mine project.

“Myanmar’s legal system derived from the British colonial models.”

Report was published that shook the legal community. The Law Report noted a shameful decision made in the case of “Union Vs U Ye Naung and one other - 1991 B.L.R-P-63”, holding that

“The appellant defendant Ye Naung and Mya Oo @ Myint Oo, Co-accused Win Naing and his wife Ma Than Than stated before the Military intelligence members how they committed the crime collectively in detail. Nevertheless these statements are not due to intimidation, coercion which is prescribed in Evidence Act Sec- 24. So it is no doubt to accept these statements as evidence.”

Myanmar’s legal system derived from the British colonial models, with Indian Codes generally applying to Burma in the colonial era. Since then, the Penal Code and Criminal Procedure Code (CrPC) remain in force today, largely unaltered. CrPC Section 162(1) has barred the use of any statement made to the police as evidence:

No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it, nor shall any such statement or any record thereof, whether in a police diary

or otherwise, or any part of such statement or record, be used as evidence (save as hereinafter provided) at any inquiry or trial in respect of any offense under investigation at the time when such statement was made:

Provided that when any witness, whose statement has been reduced into writing as aforesaid, is called either for the prosecution or for the defense in such inquiry or trial, any part of such statement, if duly proved, may be used either by the defense or by the prosecution, as the case may be, for the purpose of contradicting such witness in the manner provided by section 145 of the Evidence Act, or for the purpose of impeaching the credit of such witness in the manner provided by section 155 of the Evidence Act: and when any part of such statement is so used any part thereof may also be used in the re-examination or such witness for the purpose only explaining any matter referred to in the cross-examination.

“ The text of the Constitution is somewhat vague and contradictory with regard to judicial independence.”

Despite this legal provision, the court decision to allow the confession as evidence was upheld by Chief Justice U Aung Toe, Chief Court Judge U Aye Ohn, U Kyaw Tint, U Myo Htun Lin and U Kyaw Win. This was a very shameful moment in Myanmar's judicial history. No civilized nation accepts confessions made to the police as legal evidence. Tragically, Myanmar's apex courts have never dared to overrule the “Ye Naung” judgment to date.

In July 2014, the so-called religious conflict broke out in Mandalay, resulting in long prison sentences for some Muslims after an unfair trial. One Pho Lone (alias Soe Zaw Htwe) and Thi Ha were sentenced to 10 years imprisonment for murdering a Buddhist. The two were further charged with illegal border crossing, contact with unlawful associations and breaking public tranquility. All these cases were based on a 92-page confession to the interrogation team of military and police officers. This was actually a statement to the police and confession to an authority other than a judge, which is barred by CrPc. 162(1) and Evidence Act Sec-26. Suddenly Pho Lone and Thi Ha, the two Muslims, were tried again at the Mandalay District Court C.R.T No-21 of 2015 for high treason under Penal Code section 122. The penalty for this is life sentence or death. Unbelievably, the prosecution again raised the two Muslims' 92-page statement to the police. As their defense counsel I objected, but in vain. This clearly shows that the District Judge—or the judiciary in general—is still afraid of the military. This is the downfall of fair trial in Myanmar. It is truly a shame to be part of a country like this.

According to the Constitution, the president nominates a Supreme Court Chief Justice, who is confirmed by the Hluttaw. The Hluttaw can only reject nominees if they do not meet the qualifications for the designations. The remaining Supreme Court and High Court Justices are nominated by the president in Consultation with the Chief Justice (S-299). Moreover, the text of the Constitution is somewhat vague and contradictory with regard to judicial



Nay Myo Zin with shackles on his both legs (left). He appeared in court (right) with another accused in one of the court hearings.

“The country’s Supreme Court has no jurisdiction to court-martial and over the Constitutional Tribunal. How can we then term it as the highest court of the country?”

independence. While section 10 (a) guarantees that the judiciary should administer justice independently according to law, section 11(a) states that the judiciary is separate ‘to the extent possible’, not entirely. With regard to the Supreme Court, section 294 states that, “Without affecting the power of the Constitutional Tribunal and the Courts-Martial, the Supreme Court of the Union is the highest Court of the Union.” In other words, the country’s Supreme Court has no jurisdiction to court-martial and over the Constitutional Tribunal. How can we then term it as the highest court of the country?

The military can also easily pose a threat to judicial independence through the use of impeachment. The grounds for impeachment include potentially subjective terms such as “inefficient discharge of duties” (section 302). A quarter of Hluttaw members from either chamber can initiate impeachment proceedings; the military has its share of one-fourth parliamentary seats at any level of the Houses. The military can thus impeach any justice at any time, in accordance with the Constitution.

It can therefore be unequivocally said that as long as this Constitution exists, an independent judiciary in Myanmar is like making a silk purse out of a sow’s ear.

Burma's silent struggle: Ensuring mental health of tortured political prisoners

Assistance Association for Political Prisoners (AAPP), Burma

Earlier this year the United Nations (UN) High Commissioner for Human Rights stated that whilst Burma had promised to end the era of political prisoners, it “now seems intent on creating a new generation by jailing people who seek to enjoy the democratic freedoms that have been promised.”¹ There are currently 170 political prisoners² behind bars in Burma's prisons. With a further 443 activists awaiting trial, and arrests of activists showing no sign of abating, the situation of this new, post-junta era of political prisoners in Burma looks bleak, especially since the government refuses to officially recognize their existence.

Growing doubt over the authenticity of government reforms has led to a widespread consensus that reforms in Burma have now stalled; the continued existence of political prisoners is demonstrative of the government's backsliding on its supposed transition towards democracy. In fact, the steady rise in the number of political prisoners in Burma over the last year makes clear that the Government of Burma is increasingly cracking down on fundamental freedoms in the run up to the 2015 election.

It is evident that the government will stop at nothing to silence its critics; in the last year alone there have been multiple accounts of torture in detention, inhuman treatment and extrajudicial killings of civilians.³ Whilst those participating in the struggle for

1 OHCHR, “Myanmar “needs urgently to get back on track” – Zeid”, (February 2015) <http://www.ohchr.org/EN/NewsEvents/Pages/Media.aspx>

2 Figures accurate as of June 22, 2015. All individuals meet AAPP's political prisoner criteria - see AAPP & FPPS, “Press Release on the Definition of a Political Prisoner” (August 2014) <http://aappb.org/2014/09/aapp-fpps-press-release-about-the-definition-of-a-political-prisoner/>

3 For information on cases of torture, inhumane treatment and extrajudicial killings in the last year see: ND-Burma, “To Recognize and Repair” (2015) p29-39 <http://nd-burma.org/reports/to-recognize-and-repair/> and AAPP, “AAPP Condemns the Use of Violence and Torture in Burma and Demands the Immediate Unconditional Release of all Political Prisoners” (2015) <http://bit.ly/1LdzwRG>



AAPP Exhibition about political prisoners' activities from 21-23 March 2014.

“Even when political prisoners are released, restrictions are placed upon them by the government.”

freedom and democracy are arrested, detained, mistreated and even tortured, the perpetrators of such gross abuses enjoy the prevailing culture of impunity that exists in Burma.

Even when political prisoners are released, restrictions placed upon them by the government in addition to lingering effects of imprisonment pose major barriers to their reintegration into society. Faced with physical, social and economic obstacles to rebuilding their lives, former political prisoners and their families continue to face difficulties even after their release. In particular, the effects of torture have a hugely detrimental impact on reintegration efforts, and even when the physical wounds have healed, victims may be left with long-lasting or even permanent psychological damage.

In the absence of government-led programs to assist former political prisoners and victims of human rights abuses, organizations such as the Assistance Association for Political Prisoners (AAPP) work to fill the gap, assisting victims and their families to overcome the effects of unjust imprisonment and abuse. The AAPP's Mental Health Assistance Program provides mental health services to former political prisoners (and their families) affected by trauma, depression and anxiety as a result of torture and other mistreatment endured during incarceration,

in order to equip victims with a variety of methods to overcome their mental health issues so they can rebuild their lives.

Political prisoners in Burma

Since the 1962 military takeover to date, Burma has remained under military rule in one form or another. Fundamental freedoms such as civil and political rights have been routinely quashed as the military regime has sought to stifle even the slightest opposition within the country. It is within that context that over the last five decades, thousands of activists, journalists, and individuals attempting to defend their rights have been systematically imprisoned, and subjected to torture and gross mistreatment.

President Thein Sein's quasi-civilian government has, since 2011, instigated a number of political reforms in Burma, which initially looked to see the improvement in the political prisoner situation in Burma. Thousands were released in a series of political prisoner amnesties and furthermore, Thein Sein promised that all political prisoners would be released by the end of 2013.⁴

However, even under the current government, the judiciary remains under the de facto control of the military and government, characterized by institutionalized corruption and inefficiency.⁵ Through the continued use of draconian legislation, arbitrary detention and failure to provide detainees with fair trials, the government is able to criminalize and impede the activities undertaken by those that seek to protect their civil and political rights. In stark contrast to the commitment made by Thein Sein, by the end of 2013, 30 political prisoners remained, a number that has steadily risen over the last 18 months.

A recent violent crackdown in March against student protestors and subsequent reports of torture are indicative of the government's attitude towards those attempting to exercise their basic rights. Calling for amendments to be made to the National Education Bill,⁶ 133 protestors were arrested in Letpadan in a violent crackdown. Additional protestors were arrested in the aftermath of the crackdown. Currently 78 protestors remain in

“ Since 1962, Burma has remained under military rule in one form or another. ”

4 Humanitarian Aid Relief Trust, “Burma: TheinSein visits UK and promises to release all political prisoners” (July 2013) <http://www.hart-uk.org/blog/burma-thein-sein-visits-uk-and-promises-to-release-all-political-prisoners/>

5 United States Department of State, “Burma 2013 Human Rights Report” (2013) <http://www.state.gov/documents/organization/220394.pdf>

6 Student protestors deem the National Education Law to be undemocratic and overly centralized. They call for decentralization and democratization of the law with specific demands to recognize student unions as legal entities, to allocate 20% of the national budget for education, and to remove the clause that bars students from participating in political activities. For more information see: Burma Partnership, “Updates: National Education Law – Student Protests” (2015) <http://www.burmapartnership.org/updates-national-education-law-student-protest/>



Photos of political prisoners who died in prison. *photo by AAPP*

“Currently 78
protestors remain in
prison awaiting
trial.”

prison awaiting trial, while a further 61 await trial outside prison.⁷ Alarmingly, reports of torture⁸ of the student protestors in prison have come to light, and the students have largely been denied medical treatment for injuries received during the violent arrest, and from alleged torture.

In fact, the use of torture in Burma—particularly against political activists—remains widespread, despite the government stating in January 2014 its intention to sign the United Nations Convention against Torture (UNCAT) by September 2014. The UNCAT remains unsigned and the government’s failure to fulfill yet another commitment clearly signifies its lack of interest in addressing the gross human rights abuses that continue to permeate Burma’s political landscape. Dissident citizens of Burma will continue to endure torture and other human rights abuses until the perpetrators are held accountable and brought to justice.

⁷ Figures accurate as of June 26, 2015

⁸ AAPP, “AAPP Condemns the Use of Violence and Torture in Burma and Demands the Immediate Unconditional Release of all Political Prisoners” (March 2015)
<http://www.burmapartnership.org/2015/03/aapp-condemns-the-use-of-violence-and-torture-in-burma-and-demands-the-immediate-unconditional-release-of-all-political-prisoners/>

Making apparent the government's complete lack of interest in the political prisoner issue is the fact that the body tasked to deal with the issue – originally named the Prisoners of Conscience Affairs Committee - has yet to meet this year. Rather than actually attempting to address the alarming political prisoner situation, key members of the previous committee have been excluded and the current committee remains mired by irrelevant bureaucracy such as the ongoing reform of its name. Moreover, it is difficult to comprehend how a committee chaired by the Deputy Home Minister can take seriously the issue of political prisoners when the Home Affairs Ministry has been responsible for the recent violent crackdown against student protestors and subsequent arrests.

Torture of political detainees

The practice of torture⁹ to not only extract information and false confessions, but also to punish, degrade and humiliate political detainees, has a long history in Burma, being widely employed by successive military regimes. Evidencing the widespread and systematic nature of torture in Burma is AAPP's data collection on 1,621 former political prisoners arrested and imprisoned between 1962 and 2013.¹⁰ The majority of the former political prisoners surveyed endured torture while in detention; of those that responded to the question, 72 percent of respondents reported having been subjected to physical torture, whilst 75 percent reported being subjected to psychological torture. Ninety percent revealed that they had no access to medical treatment during this time.

The practice of torture continues to be utilized by the current government, despite provisions in both domestic and international law intended to protect detainees from harm. Whilst Burma has yet to sign UNCAT, and the 2008 Constitution provides no explicit provisions prohibiting torture and other ill treatment, there are certain guarantees provided for by the Burma Penal Code that protect detainees; for example, articles 330 and 331 prohibit "hurt" and "grievous hurt" during interrogation.¹¹

Moreover, there are international standards that provide such protections, which Burma is obliged to adhere to. Prohibition against torture is widely accepted to form part of customary international law as *jus cogens*, under which no derogation is

“ Evidencing the widespread and systematic nature of torture in Burma is AAPP's data collection on 1,621 former political prisoners arrested and imprisoned between 1962 and 2013.”

9 AAPP defines torture as per the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

10 Data was collected in 2014 throughout Burma. For more information see: AAPP, "Documentation Project Interim Report" (February 2015) <http://aappb.org/wp-content/uploads/2015/02/AAPP-FPPS-Documentation-Project-Interim-Report-Eng.pdf>

11 Myanmar Penal Code, 1861, http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf



Training for former political prisoners on basic computer skills.

“ Authorities utilize a wide range of torture techniques to physically and mentally torture political detainees, often used in conjunction with each other to maximize suffering.”

ever permitted.¹² Not only is prohibition against torture stipulated by UNCAT, it is also firmly embedded within several other major human rights instruments including the Universal Declaration of

Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

Yet, the government of Burma continually flouts both domestic and international law and political prisoners are physically and psychologically tortured throughout the country in police stations, detention centers, interrogation centers and prisons. Of the 50 former political prisoners surveyed by AAPP that were arrested and imprisoned between 2011 and 2013, over half reported being subjected to both physical torture and psychological torture. In addition, there have been numerous reports of the torture of activists in Burma perpetrated by the authorities since 2011,¹³ indicating that Thein Sein’s government continues to torture its opposition in a widespread and systematic manner.

12 Human Rights Watch, (March 2003), “The Legal Prohibition Against Torture”, <http://www.hrw.org/news/2003/03/11/legal-prohibition-against-torture#laws>

13 ND-Burma, “To Recognize and Repair” (2015) p36-39 <http://nd-burma.org/reports/to-recognize-and-repair/> and AAPP, “AAPP Condemns the Use of Violence and Torture in Burma and Demands the Immediate Unconditional Release of all Political Prisoners” (2015) <http://bit.ly/1LdzwRG>

The authorities utilize a wide range of torture techniques to physically and mentally torture political detainees, often used in conjunction with each other to maximize suffering. During interrogation, political detainees are often blindfolded or hooded¹⁴ to cause sensory deprivation, and then subjected to a wide range of interrogation methods that constitute torture including beating, being made to stand in stress positions for prolonged periods of time, being tied upside down from the ceiling, being burnt with lit cigarettes, subjected to water torture, electric shock torture and sleep deprivation.¹⁵ AAPP's data collection on former political prisoners has revealed that the same methods of interrogation that have been utilized for decades in Burma continue to be practiced by the current government.

“ Upon release, many political prisoners find it difficult to relate to others who do not share similar experiences as they feel they can never fully understand.”

Despite the ample evidence exposing grave instances of torture of political detainees in Burma, the perpetrators continue to enjoy complete impunity from their actions. Until Burma takes concrete steps towards eradicating torture, such as signing UNCAT and holding perpetrators accountable, Burmese citizens will never be afforded the right to be free from torture.

Effects of torture on mental health

While political prisoners no doubt suffer from lasting physical injuries as a result of torture, survivors of torture, ill treatment and unjust imprisonment suffer a range of mental health symptoms at varying levels of severity. Upon release, many political prisoners find it difficult to relate to others who do not share similar experiences as they feel they can never fully understand or appreciate what they endured. Thus, it can be challenging to maintain relationships with friends and family. Heightened feelings of distrust and anger as a consequence of their unjust imprisonment further exacerbate feelings of detachment and marginalization. Feelings of guilt are not uncommon as family members may blame the political prisoner for economic hardships faced by the family during the time of imprisonment.¹⁶ Feelings of guilt, hopelessness and worry over the future are a cause of sleeping difficulty as recurring thoughts or memories of the most hurtful or terrifying events can keep political prisoners awake, or manifest in nightmares.

14 The practice of the intentional sensory deprivation via blindfolding and hooding is widely recognized as a form of torture and/or cruel, inhuman and degrading treatment by international and regional human rights bodies. The UN Committee Against Torture has determined that hooding, when used in conjunction with other coercive interrogation methods, constitutes torture. See: Committee Against Torture, Concluding observations of the Committee Against Torture: Israel (May 2009) UN Doc. A/52/44 <http://www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.ISR.CO.4.pdf>

15 For more information on commonly used torture techniques in Burma see: AAPP, “The Darkness We See” (2005) p.28-56 <http://aappb.org/wp-content/uploads/2014/03/The-darkness-we-see.pdf>

16 For more information on the general mental health effects of imprisonment for former political prisoners and their families, see: AAPP, “The Darkness We See”, p.90-98



Explanation about political prisoners at the AAPP Exhibition in 23 March 2014.

“Mental health issues amongst victims of abuse are often overlooked due to a deep stigma that many in Burma attach to anything directly related to mental health.”

It is not uncommon for former political prisoners, especially those who were tortured, to exhibit symptoms of depression and anxiety, such as increased susceptibility to feeling sad and crying, to alcohol and drugs abuse, to becoming easily angered and irritable, feeling isolated and hopeless about the future, being reserved and losing concentration easily. It is not surprising that former political prisoners experiencing the symptoms of depression and anxiety often have difficulty coping with daily life.

Many former political prisoners who experienced torture suffer from post-traumatic stress disorder (PTSD), a disorder which develops following a terrifying ordeal that involved physical harm or the threat of physical harm. Former political prisoners suffering from PTSD may experience flashbacks, nightmares, feelings of fear, and angry outbursts. Re-experiencing symptoms triggered by words, objects, or situations that are reminders of the event can cause problems in the political prisoners' daily routines as sufferers often attempt to avoid places or events that may act as triggers. PTSD is often accompanied by depression, substance abuse or other anxiety disorders. Moreover, those that have close and loving relationships with the individual who experienced the traumatic event are also at risk of developing PTSD.¹⁷ Thus, it

17 National Institute of Mental Health, "Post-Traumatic Stress Disorder (PTSD)" (2015) <http://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml>

is vital to recognize that family members of the former political prisoners who were tortured may also need access to mental health services and support.

Mental health services for victims of torture

While the political detainees are routinely subject to both physical and mental torture, upon their release they have no access to physical or mental health support. Mental health issues amongst victims of abuse are often overlooked due to a deep stigma that many in Burma attach to anything directly related to mental health. Counseling is commonly associated with full psychosis or HIV, and differing forms of mental illness are not understood. Due to a history of political repression, fear, the belief that talking does not help, a lack of understanding about mental health, avoidance of symptoms, shame, and culture, discussing mental health in Burma is difficult. Former political prisoners in particular do not believe they need counseling as they are strong willed and have fought against Burma's military and quasi-civilian regimes.

In 2010, researchers from John Hopkins University's Bloomberg School of Public Health (JHU) conducted a qualitative trial in Mae Sot, Thailand (the district shares a border with Burma) to test the Common Elements Treatment Approach (CETA), a transdiagnostic psychotherapy for low-resource settings. The sample group of 150 people included survivors of imprisonment, torture, and related traumas, and all met severity criteria for depression and or/PTSD. The group was randomly divided into two: the control group and the treatment group. Lay workers delivered CETA to participants with flexibility based on client presentation. Outcomes were assessed using locally adapted standard measures of depression and PTSD (primary outcomes) and functional impairment, anxiety symptoms, aggressions, and alcohol use (secondary outcomes). CETA participants experienced significantly greater reductions of baseline symptoms across all outcomes with the exception of alcohol use. Overall the results revealed that, compared to no treatment, CETA had a large effect on the symptoms of depression and post-traumatic stress experienced by the trial participants, indicating that CETA provided by lay counselors is a highly effective treatment for comorbid mental health disorders compared to no treatment.¹⁸

Following the success of the trial, since 2011 AAPP's Mental Health Assistance Program (MHAP)—in collaboration with JHU and with funding from USAID's Victims of Torture Fund—has provided free counseling to former political prisoners and their families in Mae Sot, utilizing CETA to treat symptoms of trauma-

“CETA provided by lay counselors is a highly effective treatment for comorbid mental health disorders compared to no treatment.”

18 P. Bolton et al, “A Transdiagnostic Community-Based Mental Health Treatment for Comorbid Disorders: Development and Outcomes of a Randomized Controlled Trial among Burmese Refugees in Thailand”, PLOS Medicine, Vol. 4, Issue 11 (November 2014) <http://www.plosmedicine.org/article/doi/10.1371/journal.pmed.1001757&representation=PDF>



Truth telling sessions with torture victims.

“Local clinical supervisors provide ongoing support and training to the counselors.”

related mental health disorders including depression, anxiety and PTSD. JHU developed a sustainable model whereby mental health professionals train the local MHAP counselors—largely former political prisoners—to deliver the mental health counseling. Local clinical supervisors provide on-going support and training to the counselors, who in turn receive support and technical assistance from AAPP and JHU. In 2013, MHAP expanded CETA into Burma and since, hundreds of former political prisoners and victims of torture have received treatment. Clients are identified through AAPP’s vast network of former political prisoners and supporters inside Burma. Each client receives counseling over eight to 12 regular sessions, usually over the course of two to three months.

A major component of CETA is that it provides skills to deal with life stressors, helping former political prisoners learn to differentiate thoughts from feelings, and recognize the impact of these on behavior. These skills include engagement, psychoeducation, anxiety management strategies, behavioral activation, cognitive coping/restructuring, suicide/homicide/danger assessment and planning, and screening and brief intervention for alcohol abuse.¹⁹

¹⁹ John Hopkins Bloomberg School of Public Health, “Mental Health Assessment Project on the Thailand-Burma Border (MHAP)” (May 2014) <https://clinicaltrials.gov/ct2/show/NCT01459068>

Ko Htun was 33 years old when, in 1988 the Burma Army arrested him after a search of a foreign journalist in Rangoon revealed interview footage of Ko Htun discussing his involvement in the 1988 pro-democracy protests. Following his arrest he was sent to the Moulmein Military Intelligence Center for interrogation where he was hooded, handcuffed, suspended upside down from the ceiling by a rope, and tortured severely by both repeated beatings and electric shock. During this time he was denied food, water and medical treatment for his injuries. His interrogation lasted for approximately one month.

Following his interrogation, a military court sentenced Ko Htun to the death penalty and he was transferred to prison. A year later, he was transferred to a different prison due to his participation in a prison strike, and was beaten and tortured again. He was released in 2009, after spending 21 years of his life in prison.

While in prison his wife divorced him and his children grew up, married and started their own families. Upon his release, his children wanted no involvement with him, and when Ko Htun turned to his siblings for support, they too shunned him. With nowhere to live he was forced to seek refuge in a monastery, where he began working as a driver for the head monk. Shunned by his family and haunted by his experiences in prison, Ko Htun suffered from symptoms typical of depression and PTSD.

In June 2014, an MHAP counselor who knew Ko Htun from prison went to visit him at the monastery. After explaining the MHAP program to him, Ko Htun agreed to undergo an assessment. After hearing the diagnosis from the assessment he broke down in tears, but the counselor gave him support and assured him MHAP could help.

After reassurance, Ko Htun was eager to receive counseling and a total of eight sessions were scheduled over two months. Although he had to miss one session due to work commitments, he responded well to the counseling, openly sharing his traumatic experiences and completing tasks assigned outside of the sessions. According to the baseline and final assessments, Ko Htun experienced a reduction in his symptoms. In addition, he gave positive feedback for the CETA counseling and has affirmed that he will use the skills he learnt to deal with life stressors in the future.

MHAP currently has six teams carrying out mental health services operating in Yangon, Mandalay and Mae Sot. Each typically comprises of four lay counselors—usually former political prisoners—and one clinical supervisor. In 2014, MHAP provided mental health services to 514 former political prisoners and their families.²⁰ The ToT (Training of Trainers) program is underway in both Yangon and Mandalay, and MHAP hopes that in the future

“Upon his release, his children wanted no involvement with him, and when Ko Htun turned to his siblings for support, they too shunned him.”

20 AAPP, “Annual Report 2014”, (2014) <http://aappb.org/wp-content/uploads/2015/03/AAPP-Annual-Report-2014Eng.pdf>

it can expand further to provide counseling services in war-torn and disaster-hit regions of Burma.

“NAAPP’s research on former political prisoners provides robust evidence that torture over the last six decades in Burma constitutes a crime against humanity.”

Conclusion

According to the International Criminal Court, torture is defined as a crime against humanity when it is “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”²¹ A widespread attack is defined as “on a large scale, meaning that the acts are directed against a multiplicity of victims”, whilst a systematic attack is one which occurs following a “preconceived plan or policy”, which results “in the repeated or continuous commission of inhumane acts”.²² It is worth noting here that to constitute a crime against humanity the torture can be either widespread or systematic and need not be both. Nonetheless, AAPP’s research on former political prisoners provides robust evidence that torture over the last six decades in Burma meets both components of the criteria, thus constituting a crime against humanity.

Signing UNCAT is an essential step in ending the systematic torture of political prisoners in Burma. In signing UNCAT, the Government of Burma is legally bound to implement and enforce the convention, and victims of torture will be afforded the right to submit complaints and inquiries to the UN Committee Against Torture under article 22.²³ Moreover, provisions under UNCAT would provide victims of torture in Burma increased access to support and redress.

In addition to taking steps to end the systematic use of torture in Burma, the government must begin to provide social support for former political prisoners, especially in the way of implementing rehabilitation programs and mental health assistance. Until that time, for those former political prisoners suffering from mental health issues as a result of torture and mistreatment, small-scale programs such as MHAP are their only hope.

[About the Assistance Association for Political Prisoners (AAPP)]

Founded in 2000 by former political prisoners living in exile in Thailand, the AAPP is a human rights organization based in Mae Sot, on the Thailand-Burma border. The AAPP is dedicated to campaigning for the release of all political prisoners. The organization also provides support and aid to current political prisoners, former political prisoners and their families.

21 Rome Statute of the International Criminal Court, Article 7(f) (1988) http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf?wptouch_preview_theme=enabled

22 Report on the International Law Commission to the General Assembly on its work of its 48th Session, (1996) http://legal.un.org/ilc/documentation/english/A_51_10.pdf

23 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 22 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

Mind of steel, heart of gold: tribute to U Win Tin

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The great Chinese philosopher Confucius said, “The superior man does not, even for the space of a single meal, act contrary to virtue. In moments of haste, he cleaves to it. In seasons of danger, he cleaves to it.”¹

Most people want to speak their minds freely. However, if we have to pay a heavy price for speaking the truth, or we can gain favour by compromising our conscience, many of us may reconsider. Despite losing his freedom, his home, his upper teeth due to torture in the prison, and his adopted daughter who was forced into exile, the late U Win Tin (1930-2014) categorically stated that he could not bow down to the Burmese military regime.² He was 59-years-old when he was sent to prison in 1989. He could withstand terrible suffering not because he had better ability to languish in jail; it was due to his deep conviction that Burma should be a democracy. Without any doubt, U Win Tin was a superior man even in dark times.

U Win Tin was known as the longest-serving political prisoner in Burma. In the aftermath of the crackdown of the 1988 Uprising, the lifelong journalist co-founded the National League for Democracy (NLD) with Daw Aung San Suu Kyi. Owing to his involvement in the NLD, U Win Tin was arrested in 1989. He was initially sentenced to three years’ imprisonment with hard labour. The military junta always tried to co-opt him however. At one time, the junta brought him out of prison to a propaganda exhibition in the city, and he was asked to comment on the show. U Win Tin



U Win Tin.
*photo by Hanthawaddy
U Win Tin Foundation*

1 The quote is from Chapter 4, Analects, translated by the USC US-China Institute, University of Southern California. Original Chinese text is, “君子無終食之間違仁，造次必於是，顛沛必於是。” <http://china.usc.edu/confucius-analects-4#sthash.LS9a0Jps.dpuf>

2 “Burmese Dissident is Tested Anew as Party Agonizes over Elections”, *New York Times*, 3 October 2009, http://www.nytimes.com/2009/10/03/world/asia/03myanmar.html?_r=0.



U Win Tin visited by Daw Aung San Suu Kyi in Yangon General Hospital.

“The military regime used various means to destroy his morale. He was constantly placed under solitary confinement.”

used that opportunity to slam the military government.³ Later on, his prison term was extended twice. In 1992, he was sentenced to 11 years' imprisonment for inciting a riot in the prison. In 1996, the regime added another seven years to his prison term after he sent a complaint about the inhuman treatment in prison to the United Nations. Being known as an unbreakable man, the military regime used various means to destroy his morale. He was constantly placed under solitary confinement, sometimes in a dog cell.⁴ Even though he was elderly, he was not exempted from torture. Owing to beating, malnutrition, and denial of medication, he became very weak physically. To the government's disappointment however, U Win Tin's mind remained very strong. He never betrayed his beliefs and had no regrets despite the torment he underwent for almost 20 years. Although there was no sign that the military government would be overthrown, he made every endeavour to contribute to democracy in the country

3 “Human Rights Yearbook 1996: Burma - Pleading Not Guilty at Insein”, Human Rights Documentation Unit of the National Coalition Government of the Union of Burma, July 1997. Available at <http://www.ibiblio.org/obl/docs/96-04-PLEADING.PDF>.

4 Dog cell is a kennel of the military dog. The prisoners were locked inside the small cell while the fierce dogs could walk freely outside the cell and bark at them. It is a degrading treatment to humiliate political prisoners as well as a psychological torture.

because he believed that it would benefit society and the next generation.⁵

After being held behind bars for 19 years, U Win Tin was released in 2008. On the day the 78-year-old walked out from prison, he engaged in politics again. He refused to return the blue prisoner shirt, and instead swore to put on the blue shirt everyday until all political prisoners were freed. He kept his promise until his last breath.

U Win Tin always thought about others' well-being before his own. Back in the 1950s, he used half of his salary to support fellow journalists who were prosecuted for their political views.⁶ When family and friends sent him food in jail, he shared it with other prisoners because life in prison was really miserable.⁷ As a former political prisoner, he empathized with the predicament of political prisoners. After he was freed, he began to use his own money to help other political prisoners. Admirers wanted to support his livelihood, but he insisted on living a simple life with two small meals per day and stayed at his friend's wooden shack. Instead, he used all donations to help other former political prisoners. Upon recommendation by friends, he set up the U Win Tin Foundation to provide assistance to political prisoners and former political prisoners in 2012.

Like U Win Tin, thousands of former political prisoners in Burma have sacrificed themselves for social and political transformation in the country. Their devotion should be honoured. After being released from prison, they continue to face lots of changes in the society. Many of them for instance, suffered from chronic diseases like tuberculous, hepatitis B and heart disease after long term imprisonment. Some of them have difficulties in finding jobs because of poor health and being deprived of education while in prison. Seeing the needs of the former political prisoners, the U Win Tin Foundation provides free medical care, financial assistance and scholarship for tertiary education to ease their difficulties. As of March 2015, 136 political prisoners and 448 former political prisoners, journalists and their families have received assistance from the Foundation.

Burmese President Thein Sein promised to free all political prisoners by the end of 2013. Currently, there are at least 173 political prisoners in Burma. Another 316 activists are awaiting trial for their political beliefs or rights defending activities.⁸ Only when democracy and the rule of law exist, will laws not be used

“ He refused to return the blue prisoner shirt, and instead swore to put on the blue shirt everyday until all political prisoners were freed. ”

5 See interview on “The Naked Truth of Myanmar: a film portrait of U Win Tin” by the ElectricalFilm in 2014. The video is available at <https://www.youtube.com/watch?v=yAg77ib3Hi0>.

6 Kyaw Phyto Tha, “Despite a Frugal Existence, a Former Inmate Spends and Spends”, *Irrawaddy*, 18 December 2013, <http://www.irrawaddy.org/burma/despite-frugal-existence-former-inmate-spends-spends.html>.

7 “The Naked Truth of Myanmar”.

8 “Chronology for March 2015”, *Assistance Association for Political Prisoners (Burma)*, 9 April 2015, <http://aappb.org/2015/04/2629/>.

“The U Win Tin Foundation is playing a significant role in alleviating the hardship of the courageous people who have made sacrifices for democratic change in Burma.”

to restrain citizens' human rights, and abuses by authorities not be condoned with impunity. Equally important, the victims of gross human rights violations should have the right to remedy. Former political prisoners and other victims of human rights abuse should have access to justice. Furthermore, there must be reparation for harm that they have suffered. The state should restore the victim to his original situation before the abuse took place. Monetary compensation has to be provided to victims for their loss, while medical and psychological care should be offered for their rehabilitation. Moreover, the victims and their family should have the right to learn about the truth of the human rights violations concerned. And the government should apologize to the victims and set up mechanisms to prevent the repetition of such human rights violations.⁹

Prior to the right to remedy being attained in Burma, the U Win Tin Foundation is playing a significant role in alleviating the hardship of the courageous people who have made sacrifices for democratic change in Burma. While many people in Burma continue to respect U Win Tin, donations to the Foundation have gradually decreased with his death, according to volunteers of the Foundation. To sustain his initiative, it is hoped that more people can give a hand to current and former political prisoners in Burma.

9 See Resolution adopted by the General Assembly on 16 December 2005: 60/147 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International humanitarian Law.

“To sign UNCAT depends on who holds the real power”

*Dr. Aung Moe Nyo, Member of Parliament (Pyithu Hluttaw),
National League for Democracy, Burma*

[In this interview, Dr. Aung Moe Nyo, of the National League for Democracy, and Member of Parliament (Pyithu Hluttaw), representing Pwintphyu Township Constituency, talks about the discussion within the Parliament of his proposal for Burma to sign the UN Convention against Torture (UNCAT), and the challenges his proposal faces.

He tells Noreen, an intern for the AHRC, that none of the members of the Parliament, even the military representatives, opposed his proposal; however, the agreements they had during the discussions are yet to transform into action by signing the Convention. He notes that to sign or not to sign the Convention depends on who still holds the real power: is it the civilians or the military?]



Dr. Aung Moe Nyo

article 2: Burma has not signed the UN Convention against Torture yet. During the 6th regular session of the Parliament in 2013, your proposed bill for Burma to sign the Convention was discussed. Can you tell us more about it?

Dr. Aung Moe Nyo: There are lots of things that have happened and are happening in Burma. It reached to the lowest level where it lost its respect from other countries. If we want to move forward, we must change in a democratic way. Social and political science scholars inside and outside our country pointed out the importance of rule of law in democratic change. We discussed this in every seminar and workshop, and the need to start from a human rights point of view in upholding the rule of law. Burma must sign and ratify the Convention in order to respect human rights and dignity. For that reason, I submitted the bill in parliament.

article 2: What is the response of the Parliament members and the Speaker of the House, Thura Shwe Mann?

Dr. Aung Moe Nyo: Respective Ministries of the Government and members of Parliament discussed my proposed bill. In their response, some mentioned that since members of the Association of Southeast Asian Nations (ASEAN) have signed the UNCAT, we

“If they think civilians are important, the Government must represent them. But if they still think that the citizens have to listen to them and have to accept them as the ruler of the country, the authorities will neglect the abuse of rights.”

must sign and ratify as well. U Soe Nyunt, a judge of the Supreme Court said the courts do not prescribe inhuman punishments or judgments not in accordance with law; he also agreed to sign. All the persons part of the discussion agreed to sign, with not a single person opposed to it.

During his conclusion, the Speaker of the House, Thura Shwe Mann, said most of the human rights conventions contradict the principle of “territorial integrity”, “sovereignty”, and “national interest” of each country in the world. So as legislators, we also have to admit that we cannot and must not ignore the national interest of our country. But why, I wonder, did Thura Shwe Mann think torture is necessary for our national interest? However, we may not know without asking him directly.

After all, the Speaker of the House asked all the members of the Parliament whether they agreed or not. All agreed, including military representatives of the Parliament; the Parliament therefore recorded the hansard (minutes of the meeting) and gave an order to implement it by respective Ministries and the Government. Almost two years have passed now, but nothing has happened.

article 2: The Parliament accepted it, and recommended for the Convention to be signed, but nothing has happened until now. What is your response to that?

Dr. Aung Moe Nyo: As I received no further information to implement this, during the 9th regular session of the Parliament in September 2014, I asked again whether they will sign or not. The new Deputy Minister responded that they will target to sign the Convention in September 2014 during the 69th session of the UN General Assembly in New York City. No further progress has happened though, so I will keep on asking.

article 2: Do you have any idea if the ministries involved conducted public discussions, workshops or seminars about signing the Convention? Or are there any meetings with UN agencies and civil society organizations?

Dr. Aung Moe Nyo: There is no such discussion as far as I know. In order to make it happen, the most important factor is the Government. If they think civilians are important, the Government must represent them. But if they still think that the citizens have to listen to them and have to accept them as the ruler of the country, the authorities will neglect the abuse of rights; ignore the torture and extrajudicial killings. This can still happen.

article 2: U Zin Yaw, Deputy Minister for the Foreign Ministry said in the discussion that there must be a meeting, learning process and preparations conducted before Burma joins the countries that signed the Convention against Torture. However, in reality there aren't such things happening so far. So what do you think about that?

Dr. Aung Moe Nyo: We can say that it ended up only with words. It is only for the sake of hearing, but no real hard work on it. We have to prove our commitment with work, not by words.

article 2: Additionally, the Myanmar National Human Rights Commission, Home Ministry and Ministry of Foreign Affairs would have to be in leading roles in arranging such discussions. What is your comment on that?

Dr. Aung Moe Nyo: U Win Mra submitted the 2014 Myanmar National Human Rights Report to the Parliament, and the members deliberated on the report. In their report, the Ministry of Foreign Affairs conducted workshops and seminars about the Convention. They are trying to translate the Convention into Burmese language. That is all the discussions about UNCAT. I said I and fellow members of Parliament are not satisfied with this answer. There are lots of torture cases happening all over the country. Some torture victims have died, and some were permanently disabled. These were also pointed out by human rights groups in advocating the cases of these victims. So I wanted to know (from the MNHRC) about the situation on my proposal to sign the Convention, and what is the progress, but he didn't answer my question.

article 2: There are 6 out of 10 member countries of ASEAN that have already signed the Convention. As a member of ASEAN, can Burma follow the other countries?

Dr. Aung Moe Nyo: If the new government that represents the civilians will be in power in 2016, it certainly can. If a dictator still holds power, we can't hope that Burma will sign the Convention. If all the ASEAN countries respect international treaties, the countries can become civilized, more human and mature. We can't say that until torture stops.

article 2: In your submission, you gave examples of torture cases where victims die. In response to your argument, the Speaker of the House instructed the Ministry of Home Affairs to make public all these cases to have transparency. You brought up the cases in 2013, but up to now the Government has not made torture cases public. Why did it not happen?

Dr. Aung Moe Nyo: Police have to see the problem from the rule of law perspective. I am not saying only Myanmar police. The nature of police all over the world must be the same. They have to investigate whether the accused has broken the law or not. If the accused has broken the law, he must be prosecuted. If not, he must be set free. The police have to approach it in that way.

Military personnel obey the orders of their superiors. If the (superiors) command them to move forward, even if they know they could be killed or they could become disabled, they still have to follow their commander's order. They can't refuse by any means.

“ There are lots of torture cases happening all over the country. Some torture victims have died, and some were permanently disabled. ”

That is the nature of the military. But, the police are different. They have to promote the rule of law and to make sure that they enforce the law.

“ I don’t want any torture case to happen. The accused have the right to be presumed innocent until proven guilty according to law. ”

Although these two are different, the Minister for Home Affairs is appointed by the Commander-in-Chief of the Defence Services. The Myanmar Police Force is under Ministry of Home Affairs which means it is (still) under the military. The President can’t appoint the Ministers for Home Affairs, Defence and Border Affairs. There are 60 thousand villages, 330 townships and 60 districts which are governed by Lt-Gen Ko Ko, Minister for Home Affairs, and in ways of the military, not by the law enforcement agencies. Some police are also from the military. So they will follow orders from their commanders from above.

article 2: Do you think that the Home Affairs Ministry is transparent?

Dr. Aung Moe Nyo: There is no transparency at all. But we are trying. We are trying to bring the Director General of the Police Force to the Parliament once in six months to give a report. He has to answer in the Parliament when the Parliamentarians ask questions about the police, their activities, and cases about violations of rights. In order to achieve these things, the real power must come from the citizens themselves. The citizens must have the real power, so when the authority abuses their power, as they are elected by the people, they can bring them down.

However, in our country, if the members of Parliaments, who are elected by the citizens, want to amend the 2008 Constitution, they also need the vote from the military representatives sitting in the Parliament. They are not elected by the citizens, but are appointed by the Commander-in-Chief of the Defence Services. Twenty five percent of the members of the Parliament are military representatives. The Constitution is the mother law of the country. If the mother law has to rely on the military, you can imagine how difficult the situation in the country is.

article 2: Should Burma sign the UNCAT, will there be conditions? In some countries, they signed but they have some reservations to the Convention. What do you think about that?

Dr. Aung Moe Nyo: I have no idea about it. I can’t guess only by listening to their limited response in the Parliament.

In my personal point of view, I don’t want any torture case to happen. The accused have the right to be presumed innocent until proven guilty according to law. So they should not be treated as criminals nor subjected to torture. The persons who are detained in police custody must not be tortured. Those who commit torture and other inhuman practices must be prosecuted. There should be no excuse whether they are police, military personnel, judges or someone else. To do that, we must have a law against torture, so we must sign and ratify the UN Convention against Torture.

“We have to fight against unjust law with just law”

*Myint Thwin,
practicing lawyer and former political prisoner, Burma*

[In this interview, Myint Thwin, a practicing lawyer and former political prisoner, talks about his personal experience of being arrested, detained and tortured by Burma's military junta. He compares how the practice of torture has evolved from pre-2012 to post-2012 political changes in Burma. Also, after 2012, as a practicing lawyer, he noticed the emergence of court judges, whom he described as 'no longer afraid of the military, and who can decide independently'. This interview was conducted by Danilo Reyes, editor of article 2.]



Myint Thwin

article 2: Can you tell us about your practice as a lawyer in Burma, and your experiences of being arrested, detained and tortured? About the torture victims you met in jail and how was their condition?

Myint Thwin: I am a chief court advocate. I became a lawyer in 1987. During the 1988 student movement, I actively participated. I was arrested in 1990. I was detained in a private cell from 1990 to 1991. From 1989 to 2004, the military intelligence tortured political prisoners and activists.

While I was in detention, I was interrogated at the headquarters of the military intelligence. I was tortured as well. I saw students and Buddhist monks who were also tortured. They tortured them by putting needles under the soles of the students' feet for several hours, put spotlights on their faces, electrocuted them with electric shock, beat them with sticks, and rubbed rulers on the skin of their front lower legs. They positioned them upside down. I was also tortured in the same way. Others had hot wax poured on their skin, their penises burned with lit cigarette butts, and other methods. When I was in prison, I met many who were tortured in different ways.

Until 2004, those who were arrested by the military intelligence, the political prisoners and activists, were tortured in the same way. From 1991 to 2008, I was arrested twice a year. They did not put me in jail but kept me in custody for many days. From 2004 to 2010, the police (Special Branch) practiced torture similar to

“The police torture their victims on private body parts purposely to conceal the injuries—like by burning their penis with cigarettes.”

that of the military intelligence in the past. By that time, I was no longer a political prisoner. I went to courts inside the prison as the defence lawyer for political prisoners. Most of the National League for Democracy Party (NLD) members and 1990 election winners were arrested.

After 2010, police hardly tortured the political prisoners and activists. Although less political prisoners were tortured, persons who are arrested under the Penal Code are still being tortured. Most of them are murderers, drug sellers, robbers and thieves and they are interrogated in police custody and tortured.

From 2012 to present, although activists are still being arrested under criminal cases, it is no longer common for activists to be tortured as it was in the past. The government is now using article 18 of the Peaceful Assembly and Procession Act against the activists, and section 505(b) of the Penal Code against the leaders. The sections that are used now have shorter prison terms compared with the 2007-2008 period, when authorities used section 124 (A) of the Penal Code, so that life sentences could be imposed on political prisoners.

During Burma's long civil war, ethnic minorities in the conflict areas were tortured when the military suspected them of being rebels. Occurring in military camps, these cases never reached the court. Despite peace meetings between the leaders of ethnic armed groups and the military as well as the announcement of several ceasefires, the conflicts are ongoing. If the Burmese Army suspects civilians to be rebels, they arrest, detain, interrogate and torture them. They imprison them for violation of section 17 (1) of the Unlawful Association Act.

We have legal provisions (not a specific domestic law) against torture, and prohibition on the police or military intelligence from committing torture. When the accused makes a confession before the court, the judges have to check all over their body whether they have been tortured or not. If they were tortured, the judge must reject the confession. But the police torture their victims on private body parts purposely to conceal the injuries—like by burning their penis with cigarettes—to make sure judges would not find the victims have suffered from torture.

article 2: After 2012, there is the idea of an opening or space for activists. You mention that during the military regime, it was the military who committed torture, but now it is the police who are doing it. They torture suspected murderers, robbers, etc.

Myint Thwin: Yes, during the military regime, activists are most likely victims of torture. Even if they are not political party members or political activists, but just persons who help other victims or ordinary people with their rights, the military intelligence would arrest them and put them in jail for theft or other fabricated charges.

It is correct that those who are being tortured are either activist or ordinary persons; one who challenges the authorities, and another one being those arrested for robbery or murder—or ordinary crimes. Victims of torture are not necessarily activists, they can be anybody.

“Victims of torture are not necessarily activists, they can be anybody.”

But after 2010, the activists attached to a political party, for example activist Daw Bouk Ja from Kachin State, are being closely monitored. If they make a small mistake, the authorities immediately arrest them. Recently, most activists have been arrested for taking part in peaceful processions and protests.

There is a law that guarantees the right to assembly: the Peaceful Assembly and Procession Act. In the past, you had to seek permission before you could protest, but an amendment to this law removed the requirement to seek permission. To notify is now enough, however, protesters not only continue to be prosecuted under this law, but they are now also facing violations under section 505(b) of the Penal Code, for causing alarm and scandal. This Code can impose a punishment of several years' imprisonment without bail. The protesters are thus now charged under criminal offences and sentenced to jail. They are tortured mentally by repeated arrest rather than physically tortured.

article 2: In areas where there is armed conflict, those who oppose the government are still subjected to torture when suspected as rebels?

Myint Thwin: Many disappearances have been conducted by the Burmese army in ethnic states such as Shan, Kachin and Kayin States. Young men were arrested as porters and some were accused of being rebels and disappeared, and girls were raped and killed. Earlier, there was no hope to find them again or to prosecute the perpetrators.

However, according to the 2008 Constitution, we now can file a writ petition for such disappearance cases. We can write that someone has been arrested by which battalion, by which rank officers, and for how many days. Under article 296 (a) (b) (c) of the Constitution, the Union Judiciary Law, article 16 and Criminal Procedure Code, section 491, we can file a writ.

article 2: As a lawyer, former political prisoner and torture victim yourself, when you go to court to argue a case, based on your experience, do you think that the court will provide you and your client a remedy or redress? Do you have that in mind? Do you have confidence in the court?

Myint Thwin: I will answer that in two parts, based on the cases that I handle: criminal cases and civil cases.

Firstly, in criminal cases, whenever I stand for the activists and political cases, I know that the judge will not make a fair

“My clients, the political prisoners, also don’t care about winning or losing the case. They believe that they are doing right.”

judgment. But in the hearing, I ask questions that can reveal the oppression, abuse of powers and torture by the authorities. I went to prison court for political prisoners and found that township courts follow the orders of the military personnel. The charges were reduced only if we appealed at the higher level, district or divisional courts.

My clients, the political prisoners, also don’t care about winning or losing the case. They believe that they are doing right, and that they can show the people what is wrong. They only hope to throw out the military dictators and have strength for it, but not to get any opportunity to win.

Secondly, in civil cases, in 2009-2010, I sued the company backed by the military and also the cronies of the company for grabbing land. When I clearly pointed to the violations they committed under the law, I won the cases. At that time, the order (for me to win the case) came from the military generals.

After 2012, there are two kinds of judges we see emerging: one kind are the judges who are afraid of the military, and the other are judges who are not afraid of the military. These are judges who can now decide independently, and are not influenced by the military.

We can see that Lt-General Thar Aye still interferes after he became Chief Minister of Sagaing Region. Ministers are former military generals, so they are still used to do the same thing. According to the Constitution, the Judiciary, the Executive and Legislature are independent from each other. In a Union Government meeting, the Chief Justice is not required to attend as he is independent. And, the Attorney General of the Union is a member of Union Government. However, some Ministers still think they can order judges to listen to them. So we fight against them in accordance with law.

article 2: I understand that there is a purpose. You know that whether you win or lose, there is an education process in the courts, among the victims, and even judges. They can argue that what they do is wrong and I think you have a very strong sense of what is wrong and what is right. Can you imagine court judges, law officers or police who people can have full confidence in, that they will protect rights?

Myint Thwin: Yes, I have. To build up a democratic country, we must try to reach the dream. We have to fight against this system in accordance with law. To be a democratic country, rule of law is the most important thing. To have rule of law, every citizen and government must know the laws. Citizens, government and judiciary have harmony in justice in accordance with law. We have to fight against unjust law with just law. I believe that we will achieve this goal one day.

article 2: What is your opinion of ordinary Burmese views on the police, law officers and judges? What do they think of them? Do they fear them or do they think that they are fair and follow what is right?

Myint Thwin: They are still afraid of them and can't trust the judgements. So lawyers, advocates, politicians, and rights activists share with them the knowledge of laws so as not to be afraid of them. We can educate them by giving legal education training. I have already given more than 200 legal education trainings in six states and in seven regions in Burma.

I can share with them not to be afraid of authorities and let them know that they can even prosecute the authorities.

article 2: What is their response?

Myint Thwin: They are now having courage, and some can now talk back to the military generals. In Naypyitaw, one general told me that "some farmers here said they aren't afraid because they have U Myint Thwin".

article 2: Thank you very much, Myint Thwin.

“ Ordinary
Burmese are still
afraid of judges
and can't trust the
judgements.”

“The military not the court decides”

Thein Than Oo, practicing lawyer, Burma



Thein Than Oo

[In this interview Thein Than Oo, a practicing lawyer in Burma, talks about his arrest and detention on two occasions, and his disbarment from legal practice. He resumed his practice after his license was reinstated. This interview was conducted by Basil Fernando, a member of the editorial board of article 2]

article 2: Could you please tell us how long you have been engaged in legal practice in Burma and how much time you spent in detention?

Thein: First of all, as a university student I was sentenced to seven years imprisonment in Insein Jail. As a lawyer in 1990, I was sentenced to 14 years, and the third time during the Saffron Revolution, I was detained again.

article 2: All this happened because you protested against the military government?

Thein: Yes. This is my struggle against the military junta.

article 2: With all your long years of experience with the legal system in Burma, what is your opinion about it?

Thein: From my point of view, Burma’s legal system and judicial system are seriously corrupted and dependent. According to the 2008 constitution, the judiciary is under the military. The legal system is therefore not competent, not independent and not impartial.

article 2: So you are saying that the judiciary is controlled by the military directly?

Thein: Yes. According to the constitution, the judges are selected by the President.

article 2: Is it correct to say that most of the judges are themselves people from the military?

Thein: Yes. At the Union Supreme Court, four out of seven judges are former military personnel.

article 2: How about other courts?

Thein: Comparatively rare, but all the courts are under the military.

article 2: If there are some cases where the military has interest and the government has interest, will the judges feel free to give an independent judgment?

Thein: No, they cannot. We can't get (an independent judgment). If the government or military is interested, there will be no justice. In my experience, in the Mandalay riot cases, five out of 11 accused were clearly innocent and the court knew very well about that. Even one plaintiff's witnesses were told about that. There was no direct or indirect evidence to indicate they were related to the crime or killing, but they were (still) sentenced to ten years imprisonment. I believe this is not a decision by the district judge of Mandalay but from the military.

article 2: So innocent people are being convicted. Is this related to their statements given during interrogation and torture, admitted as evidence?

Thein: Yes, in some cases. In this case (Mandalay riot) though, no statements were given to the police or military intelligence. However, in many cases there are court practices that they accept statements (obtained through torture) as legal evidence.

article 2: Is it correct to say that in many cases they are sentenced only on such evidence?

Thein: Yes, there are so many cases based only on that evidence. In my experience, in one case, State vs Lataw Baran Shaung, the victim was a Kachin. He was arrested under the Unlawful Association Act section 17(1). In his case, the plaintiff witnesses are police and military intelligence. There were no witnesses who were under pressure. But they set up the case in accordance with the testimony of the interrogators or statement to the military intelligence. The court accepted it. This is not in accordance with law. According to the Criminal Procedure Code, section 162 and Evidence Act, section 6, these statements can't be used in trial. But the court accepted them and sentenced him to two years imprisonment.

article 2: Is the fabrication of charges quite common?

Thein: No, such cases are rare.

article 2: You work on mostly political cases?

“They set up the case in accordance with the testimony of the interrogators or statement to the military intelligence.”

Thein: Half of the cases that I handle are politically oriented cases, like land grabbing and political dissidence.

“The Judiciary must be independent, so judges should be civilians.”

article 2: So in land grabbing and political dissidence cases, is there a possibility of getting an acquittal if people are innocent?

Thein: I have no experience of acquittals. Only in one case, of Phyu Hnin Htwe, a student leader who helped the Letpadaung Copper Mine farmers. She was arrested under Penal Code sections 496 and 498 but the case was withdrawn. It is the only case in my experience where the victim was released; all other political prisoners are sentenced.

article 2: Are things changing now?

Thein: Slightly changing. Other sectors are same as under the former government, but in the media sector there are some changes. We can write or denounce the military or dictatorship, and former military General Than Shwe. So this is progress in the media.

article 2: In future what do you think should be done to improve the judiciary as well as legal practice?

Thein: All problems and all issues in Burma are based on the 2008 Constitution. We need to amend the Constitution. If we can't do it, the judiciary also cannot be (expected) to be good.

article 2: So what you mean is that the 2008 Constitution makes the judiciary dependent on the military? Unless there is change, an independent judiciary will not come about? So you are strongly for the change of this constitution?

Thein: Yes. This is the vital question of Myanmar.

article 2: What do you think about legal education these days?

Thein: Not only legal education, the entire education system is very poor and of a very low standard.

article 2: So is there any attempt to improve it, particularly legal education?

Thein: Now, academic personnel and we lawyers are trying to upgrade legal education.

article 2: In your view, would there be a real big change if retired military personnel can no longer be judges?

Thein: Yes. The judiciary must be independent, so judges should be civilians, academics or intellectuals who have judicial experience. Judges must not be former generals. We only want that.

article 2: Do you see more and more independent lawyers emerging?

Thein: More and more activist lawyers are emerging and now we are trying to form our National Bar Association, and we are to assemble to protest against the oppression of lawyers.

article 2: So there is the special attempt to fight against oppression of lawyers?

Thein: Yes, yes.

article 2: In the past, you were also disbarred, as were several other people. Now, has it been removed (license to practice law reinstated)?

Thein: Yes. But in recent times there are over 200 advocates or Supreme Court Lawyers who are still disbarred. It is not in accordance with law. They had no rights to defend themselves.

article 2: So the Bar Association is trying to remove that?

Thein: Yes.

article 2: Although things are difficult, there are many people who fight against the system?

Thein: Yes, indeed.

“ More and more activist lawyers are emerging and now we are trying to form our National Bar Association.”

“Students are still in jail, I can’t just ignore them”

Aung Min Khine, a 16-year-old student protestor, Burma

[Aung Min Khine, a 16-year-old student protestor, talks about how he was arrested, detained and severely beaten by over a dozen riot police during the crackdown on student protestors on March 10, 2015. He tells Noreen, an intern for the Asian Human Rights Commission (AHRC), how his parents kicked him out from their house when they learnt he joined the protests, and how his teachers and classmates also dissuaded him. Later however, they all supported his cause fully.]

article 2: Tell me your name, age, and which grade you are attending. How did you get involved in the student protests?

Aung Min Khine: I was born on 22 May 1999 and am attending grade 11 at Paungde Basic Education High School. As a student and chairperson of the Shwebo District Basic Education Students Union, I have connections with the All Burma Federation of Student Union. I started participating in the protests since the new education law was drafted. After the law was enacted, the students boycotted the law and started the protests again. On 20 January 2015, the Mandalay-Yangon primary protest march began.

article 2: Did your parents allow you to join the protests?

Aung Min Khine: At the time they did not allow it, and they could not understand me either. But now they accept it.

article 2: Without your parents’ support, what kind of difficulties did you face? When did you start following the main student protesters?

Aung Min Khine: I fought with my parents and they even kicked me out of the house. My teachers and friends also didn’t like my activities. I faced many kinds of problems. But now I have overcome all these difficulties. I am OK with my parents and my school now. I joined the protest from Palate Township located 15 miles from Mandalay on January 20. Since then, I didn’t go home until the police crackdown on the protestors.



Aung Min Khine outside the court.

article 2: What had happened on the day of the crackdown, 10 March 2015?

Aung Min Khine: The police had stopped our path to Yangon in Letpadan Township for almost a week. On that day I didn't have my breakfast, and started shouting slogans and singing while the leaders were in discussion with the authorities. When we heard that the authorities would open the police line/gate, we were so happy that we didn't have our lunch. However, the authorities changed their mind. So the students gave 45 minutes to negotiate, but it was like pouring water into the sand. Finally, we started pushing the police line, but failed. We tried a second time, and failed again. I was tired after two tries, so I went to a car nearby and took rest.

When I was sitting there, the police started attacking the protesters. They threw stones and heavy materials at the protesters, and beat them with batons. The police dragged me and one Buddhist monk from the car. When they started beating, I was hit on my one hand badly. So I comforted the injury with

“The police dragged me and one Buddhist monk from the car. When they started beating, I was hit on my one hand badly.”

“The police came to interrogate us. Although they didn’t torture us, they threatened us and called us “Communists”. ”

my other hand while trying to escape. The police pulled down my longyi when I was escaping. I tried to pick it up, they beat me again. I was taken by two police officers, but some 25 to 30 police came and beat my entire body all the way to the prison bus. I almost fainted because of my head injuries, however, fortunately one policeman helped me to stand, otherwise I may have hit my head on the concrete ground.

When we reached Tharawaddy prison, they applied some medicine to my injuries and bandaged them with gauze. Together with nine others who were most injured, I was placed in the Prison Hospital. We were offered rice which was so hard to swallow with no curry. Although we asked for congee, it also was not edible. I didn’t have a single meal the whole day, and my body was so painful that I couldn’t sleep at night. I was in hospital for three days.

article 2: How were you treated in prison? How was the health care, water, sanitation and food?

Aung Min Khine: At first, the police came to interrogate us. Although they didn’t torture us, they threatened us and called us “Communists”. I had to stay with 31 others; all of them were students, in one big room. The water was unclean, there were flies, we were bitten by mosquitos and insects, which made our skin itchy with allergies. We asked for mosquito nets, but no response. As the news started spreading about that, mosquito nets were provided. Though the place was big enough for all of us, we couldn’t sleep when it was raining at night, as water came inside from the windows. Food was sometimes good, sometimes bad, and when it was bad we could not eat.

article 2: Did the police and prison authorities know that you are underage?

Aung Min Khine: I told them, but there was no response, and I was detained like any other students and prisoners.

article 2: When did you meet with your lawyers?

Aung Min Khine: I met my lawyers and parents on the first day of the trial, 25 March 2015. Burma Lawyers’ Network helped all the students.

article 2: How did you get bail?

Aung Min Khine: My lawyers found out that I am under 16, so they applied for bail and for hearing my case in the juvenile court. I got bail on May 12.

article 2: Do you know how many sections are filed against you and which are the sections?

Aung Min Khine: I know there are five sections: 143, 145, 147, 332 and 505(b) of the Penal Code. They can put me in prison for 9 years and 6 months if I am convicted under all these charges.

[Section 143 of the Penal Code pertains to unlawful assembly, section 145 to joining or continuing in unlawful assembly, section 147 to rioting and section 332 to voluntarily causing harm to deter public servants. Section 505 (b) prohibits publishing or circulating information that may cause public fear or alarm and which may incite people to commit offences against the state or public tranquility.]

article 2: Are there any students in juvenile court with you?

Aung Min Khine: At first I was the only one, but later another student proved that he is underage, and his case was also transferred to the juvenile court.

article 2: I heard that in the court testimony, when the defence lawyers asked some police they said that they didn't beat the students but just tend to do that. What is your opinion on that?

Aung Min Khine: They didn't admit the truth. They are trying to hide whatever bad things they had done to us. If they are civil servants, they have to tell the truth. This government is also lying to us. People know how bad the authorities are, when they brutally crackdown on the protesters. I don't want shameless government. I will fight against them until it changes.

article 2: What is your plan for the future, especially for the education bill and detained students?

Aung Min Khine: I will fight for the education law until we get what we demand for and will stand for my seniors who are still in jail (nearly 70 are still in prison). I will fight for them until they released.

article 2: Are you going back to school again?

Aung Min Khine: Yes. As I couldn't sit for my final exam for grade 11 in March this year, I have to attend the same grade



Aung Min Khine
with lawyers.

“If they are civil servants, they have to tell the truth. This government is also lying to us. People know how bad the authorities are.”

again in government school. When the monthly exam and court hearing days are the same, I skipped the exam to come to court.

“As a student, I have a responsibility to fight to get a good education system. Everyone deserves better education.”

article 2: How do your teachers and friends treat you?

Aung Min Khine: My friends are quite normal, but my teachers asked me not to participate in such activities again.

article 2: What was your response to that?

Aung Min Khine: I understand that they have responsibility to say that, so I appreciate it. But I can't follow what they have said. As a student, I have a responsibility to fight to get a good education system. Everyone deserves better education. Our seniors in different decades too fought for changes. My fellow students are still in jail, I can't just ignore them. I will fight till we reach our goal.

article 2: How is your health now?

Aung Min Khine: I suffer from headaches and dizziness whenever I study. Sometimes I can't recall what I have learned.

article 2: Now you have reunited with your family and they understand you. Do you think that they will allow you to continue?

Aung Min Khine: Yes, I think so.

article 2: Thank you so much.

Appendix I

Universal Periodic Review (UPR) submission to the UN Human Rights Council

Asian Legal Resource Centre

Submission to the Human Rights Council's Universal Periodic Review concerning the human rights situation in Myanmar

I. SUMMARY:

1. This submission, pursuant to Human Rights Council resolution 5/1, which provides for civil society to participate in the Universal Periodic Review process of United Nations Member States' human rights obligations and commitments, concentrates on the features of legal, judicial and policing frameworks that enable the un-rule of law in Myanmar. The country lacks a normative framework to protect human rights under article 5 and articles 8 through 13 of the Universal Declaration of Human Rights. It lacks an independent and impartial judiciary. Its police force is militarized. Gross human rights abuse is systemic. Avenues for redress as envisaged in international standards are absent. Two major obstacles to implementation of human rights are the State's perception that the rule of law is a function of the executive and therefore that the role of the judiciary is to enforce policy rather than law; and, the accompanying systemic corruption in all parts of the State apparatus, especially in the judiciary and police.

II. METHODS:

2. Specialist staff and associates of the Asian Legal Resource Centre ('ALRC') have worked intensively on the situation of human rights and the rule of law in Myanmar over the last 12 years with which the Review process is concerned. In this time, the ALRC has studied and documented hundreds of cases upon which the analysis in this submission is based. The ALRC communicates regularly work closely with human rights defenders and other persons inside the country, and

with experts and knowledgeable concerned persons abroad. It follows closely media reports in Burmese and English from inside and outside the country. And, it has done extensive documentary research on the historical causes of the current un-rule of law in Myanmar.

3. The ALRC has frequently communicated its findings to the Special Procedures, and has presented them in submissions to the Council at successive sessions. It has issued a number of special reports on Myanmar. An annex to this submission contains a list of pertinent documentation.

III. BACKGROUND:

4. At independence in 1948, Myanmar inherited British colonial laws, policing and judicial systems. The police force was corrupt and violent; however, the courts checked abuses. Under the 1947 Constitution they exercised powers independently. The superior judiciary had a reputation for impartiality and concern for constitutionally-enshrined fundamental rights. After the military coup in 1962, the administration brought the judiciary under its control. It steadily degraded the entire institutional framework for the rule of law. In 1972, it abolished the professional judiciary and integrated the courts into the executive. It also brought specialised policing units under military intelligence. Citizens had no means for effective redress of fundamental rights without executive endorsement.
5. In 1988 following nationwide protests, the massacre of protestors and establishment of a new military regime, the administration laid down the basic blocks for the present-day legal, judicial and policing framework. It re-established a professional judiciary, but kept it under executive control through supervision of the Supreme Court. It has increasingly militarized the police force, and has also assigned other agencies—such as the fire brigade—policing and paramilitary functions. It has continued to assign the police a de facto military intelligence role. In recent years, as seen during the September 2007 protests, it has used auxiliary paramilitary forces of ambiguous legal status for security purposes. In 2008, it passed a new constitution that came into effect after 2010 general elections.
6. In 2010 general election, many activists and politicians including opposition party leader Aung San Su Kyi were in still in jail so they didn't get chance to take part in election. NLD party boycotted the 2010 election. U Thein Sein became the President and his party, SPDP got the most seats in parliament. However, in 2012 by-election most of the political prisoners had been released and legislature amended some provisions of the Constitution. The NLD party and other parties were registered and participated in the election.

IV. FRAMEWORK:

A. The Normative Framework.

7. The State is not a party to most international human rights treaties, including the International Covenant on Civil and Political Rights despite the fact that the First Cycle of the Universal Periodic Review (UPR) adopted 180 recommendations including the ratification of the ICCPR (In reference to Recommendations No. 104.6.,104.7.,106.4. and 106.13.). Therefore in international law its human rights obligations in terms of the rule of law must be assessed in accordance with the Universal Declaration, in particular, articles 5, and 8–13.
8. The State has practically no domestic normative framework for the protection of human rights through the rule of law. Rather, it has a framework for the denial of rights through what the Special Rapporteur on the situation of human rights in Myanmar in 2003 correctly described as the “‘un-rule of law’ which presently affects most of the population in Myanmar” (E/CN.4/2003/41, para. 58).
9. Certain laws have limited provisions to protect the rights outlined in the Universal Declaration. These are mostly procedural delimitations on police powers under the Criminal Procedure Code and Evidence Act, and some broad guarantees under the Judiciary Law. Not only are these routinely ignored in reality—both deliberately as well as through the overall debasement of the legal system, and through the loss of judicial independence upon which they are premised—they are formally negated through jurisprudence.
10. The preponderance of legislation in Myanmar continues to be aimed not at the defence of human rights but at their denial. The State has retained and continues to use antiquated colonial-era and postcolonial statutes. Those include but are not limited to: New Contempt Law; Emergency Provisions Act, 1950, section 5; Foreign Exchange Regulation Act, 1947, section 24(1); Immigration (Emergency Provisions) Act, 1947, section 13(1); Official Secrets Act, 1923, section 3(1); Penal Code, sections 124A, 153A, 186, 189, 211, 294, 295A, 332, 353, 505(b); Tuition Law, 1984; and, Unlawful Associations Act, 1908, section 17(1). From 1988 to 2011, all laws were passed as executive decrees, not through any legislative process. In this time, the laws that have been introduced to curtail human rights include: the so-called Anti-Subversion Law, 1996; Electronic Transactions Law, 2004; and, Television and Video Law, 1996. After 2011, 64 new laws were enacted, 55 laws were amended and 14 laws were repealed.
11. The 2008 Constitution is in terms of human rights a norm-less constitution. Under its provisions, the armed forces are placed outside of judicial authority. The military, not the judiciary, is

the constitution's guardian. The judiciary is separated from other branches of government only "to the extent possible". All rights are qualified with ambiguous language that permits exemptions under circumstances of the State's choosing. For instance, the right not to be held in custody for more than 24 hours before being brought before a magistrate, which already exists in the Criminal

Procedure Code, is under the new constitution delimited by an exception for "matters on precautionary measures taken for the security of the Union or prevalence of law and order, peace and tranquility in accord with the law in the interest of the public, or the matters permitted according to an existing law" (section 376). This provision effectively legalizes arbitrary detention of the sort that is already rife in Myanmar. Other provisions that purport to guarantee rights do so only to the extent permitted by other laws, and in so far as they do not threaten the security of the state or contravene undefined standards of public morality. The constitution allows for rights to be revoked at any time and for their suspension during a state of emergency. The cumulative effect of these qualifications is to render all statements of rights meaningless. Some relevant sections of the constitution can be found in the annex.

B. The Institutional Framework:

12. Despite the political changes in Myanmar since 2011 to the very limited extent that norms exist for the protection of human rights in Myanmar, under the current institutional framework they cannot be enforced except in certain types of cases that correspond with state policy. The main features of the institutional framework that prohibit enforcement are the militarized functions of the police force, resulting in routine and systemic human rights abuses, and the non independence of the judiciary.
13. The police force in Myanmar has two broad functions that correspond with those of other forces around the world. First, it secures public order, and second, it investigates crime. However, in Myanmar it does not perform these functions as a discrete professional civilian force but as a paramilitary and intelligence agency under command of the armed forces. Policing functions are also shared among other parts of the state apparatus, including with executive councils at all levels that supervise and oversee other agencies, and with other local bodies, including the fire brigade and a government-organized mass group. At the same time, specialized agencies, in particular the Special Branch, operate as proxies for military intelligence, rather than as autonomous investigators of crime. Consequently, the characteristics of policing and prosecutions in Myanmar include: routine arbitrary arrest and detention; common use of torture and other forms of cruel and inhuman treatment, and frequent deaths in custody; coerced signing of

documents that have no basis in law; baseless and duplicated charges; and fabricated cases. The annex to this submission contains examples to illustrate and support each of these points, as well as for those in the next paragraph, on the judiciary.

14. Although the courts are not formally subordinate to the executive, they can neither function in accordance with the laws that they purport to uphold nor in a manner that can defend, let alone implement human rights. Some of their features include:
 - a. Procedurally-incorrect cases: Breaches of legal procedure are routine in all types of cases. In politically-motivated cases, breaches occur because of the imperative to arrive at predetermined verdicts; in ordinary cases, because of the general debasement of the judiciary under the un-rule of law and because of endemic corruption.
 - b. Evidence-less cases: Accused persons in criminal cases in Myanmar are routinely imprisoned without evidence for the same reasons that cause procedural incorrectness.
 - c. Lack of means for redress: There are no effective means for redress to victims of human rights abuse through the courts in Myanmar.

The First Cycle of the UPR on Myanmar recommended (Recommendation No. 104.37.) the State to ‘ensure the independence of judiciary and guarantee due process of law’. Regrettably, Myanmar has failed to initiate any step in ensuring the country’s judicial independence in compliance with the recommendations.

V. Current Issues:

15. Impunity of the military and police is being guaranteed where rule of law is not well functioning in the system. When the military personnel committed crime, the perpetrators are hardly punished in accordance with law. Several cases of torture to death in custody, arbitrary arrest and detention, torture and extra-judicial killing were documented even after political changes in 2011. Impunity to the perpetrators of torture, extrajudicial executions and other gross violations of human rights continues unabatedly. The culture impunity is maintained by the State despite the Recommendations (No. 107.6., 107.42. and 107.44.) in the First Cycle of the UPR.

Although citizen use their democratic rights, according to Constitution or in accordance with law, their rights have been denied. Since the new land law amendment on 30 March 2012, the farmers began attempting to get their land back and Commander-in-Chief said Farmers protest over land grabbing however their

peaceful protest turned into sending themselves to jail. Their right to life even threaten over protesting land dispute cases.

With the lack of rule of law, religious conflict were taking place during last few years. Government let the hate speech spread among each other through social media or in any vacuum. The council and international community should closely watch the upcoming 2015 general election to be held without any interference by any reason.

VI. REQUIRES A REALISTIC APPROACH:

16. The Council's continued support for the mandate of the Special Rapporteur assigned to the country is commendable, and successive mandate holders have played an important role in outlining the features of abuse and some of the obstacles to a regime of human rights in Myanmar; however, the mandate is limited by the amount of time that each rapporteur can devote to it, the limited resources and support for the mandate, and the fact that each new mandate-holder has to acquaint himself with the country before engaging with the issues and concerned persons. Therefore, the Council should not be satisfied with limiting itself to the work of the Special Rapporteur or other Special Procedures, but consider how it can use these and other mechanisms to work better within and through the wider United Nations system, to apprise itself of the facts, and coordinate its activities with other parts of the system with a view towards substantive political change of the sort that must pre-empt any substantive change in the normative and institutional frameworks through which to implement human rights. Its strategy should take into account and be coordinated with initiatives on Myanmar in other peak bodies, including the General Assembly and the Security Council, as well as draw upon the work undertaken by a range of UN agencies within Myanmar.

Appendix II

Features of the practice of torture by law enforcement agencies

Asian Legal Resource Centre

BURMA / MYANMAR: Features of the practice of torture by law enforcement agencies

ALRC-CWS-27-09-2014

September 4, 2014

HUMAN RIGHTS COUNCIL

Twenty seventh session, Agenda Item 3, General Debate

A written submission to the UN Human Rights Council by the
Asian Legal Resource Centre

1. The practice of police torture in Myanmar remains unchanged despite the efforts and work of countless individuals across the globe. The practice of such human rights abuse in Myanmar predates recent political changes and continues even after government reform. Myanmar citizens expected the new government to move away such human rights abuse. Earlier this year, the Government of Myanmar planned and discussed signing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with the UN Human Rights Council. This too suggested improvement. But, in practice, there is no change.
2. The Asian Legal Resource Centre (ALRC) has long sought the attention of the Council and its predecessor organization regarding the practice of torture in Myanmar. Although it has been discussed at higher levels of government, the practice of torture or ill-treatment in police custody continues. The ALRC draws to the attention of the Council a few cases that it has been working on this year.
 - a. In July 2014, Ko Zin Aung, a rickshaw driver, was tortured in police custody, and subsequently admitted to a hospital

in critical condition where he died from his injuries. Without notifying an administrative officer and without any arrest warrant, the police arrested him after accusing him of stealing a bottle of motorcycle fuel. They detained him without a court order and never filed a case against him. After his death on 7 July 2014, his cousin sent complaint letters to authorities with photographic evidence taken prior to the postmortem examination. The Insein Criminal Investigation Department (CID) went to meet the victim's relatives and threatened them with arrest if they spread "wrong" information about the case. In addition, in their own investigation, the CID officials forced the witnesses to sign statements they had distorted with their own interpretation. The victim's relatives are vulnerable and fear reprisal.

- b. In May 2013, Ko Nan Win was accused of theft, arrested, and detained in custody, where he was tortured for several days to extract a confession. Because he did not confess, the police took his pregnant wife in custody and tortured her as well. After extracting her confession, the police handcuffed her, tied her feet together, and put her in a boat, ostensibly to take her to the spot where stolen goods were allegedly kept across the river. The police claim she jumped into the river and that they could not rescue her. The police found her dead body three days later. Since there is no evidence against him, Ko Nan Win was acquitted by the Patheingyi Township Court on 30 July 2014.
- c. A 14-year-old girl, who began working as a domestic help in December 2013, has been tortured by her employers. After a few months of work, she was found in a hospital bruised and burned. The injury on her hands has made her incapable of using them; her employers forced them into hot oil as punishment. The victim's mother has lodged a complaint but the relevant police authorities have not taken action in over five months, indicative of their apathy to such practice. The girl remains physically and mentally traumatized.
- d. Farmer and land rights activist, U Than Htun, was arrested without warrant on May 17, 2013, detained in custody, and tortured. As a result of torture, on May 23, 2013, he died. The police have claimed he was an alcoholic and had beaten himself to death. However, the body showed dramatic signs of torture. The forensic doctor noted the victim died from bleeding inside the lungs (haemothorax) due to broken ribs on his right side, caused by trauma inconsistent with the police version of the event. The postmortem examination also showed that the skin on both

wrists was torn apart due to prolonged time in handcuffs. The application of the victim's wife to open the case has been unsuccessful in court. It should also be noted that the Bago Region High Court has declared the death unnatural, but has not given any order for further action.

e. In January 2013, the police arrested two villagers (Myint Lwin and Ohn Lay) without warrants and tortured them while they were in detention for 17 days in Nattalin Township. The brother of one of the victims opened a case against the police for causing injury but the court shut the case. The police decided not to prosecute the officers responsible, instead transferring those involved to other police stations. The matter was not handled by criminal law, but under the Police Maintenance of Discipline law. No further action has been taken against the officers. The defence lawyer for the victims is preparing a Supreme Court appeal against the decision not to prosecute the officers.

f. Two men were imprisoned for one and a half years for thefts in 2012. In this case, an elderly man and a young man were accused of stealing a box of gold jewelry, but no evidence has proven that they stole the box. However, the police tortured the elderly man in custody to obtain a confession. Because he was innocent, he refused to confess. Consequently, the police took the young man to a room where he could see the old man being tortured and threatened him that he too would be tortured if he did not confess. The young man was so afraid he falsely confessed that they stole the box. In a court, the judge saw the physical evidence of the torture on the body of the victim but ignored it and said that since there was no evidence that the young man was tortured, the court could accept the confession as evidence.

3. These are a few of the cases the ALRC has documented. There are far more incidents of torture that continue to occur throughout the country. There is still no remedy available to victims or their families.

4. As the ALRC has continuously pointed out, the practice of torture by law enforcement agencies has been standard operating procedure through the interrogation process and it has been used to "solve" any unsettled criminal cases filed by officials. Even in an ordinary criminal case, those in custody are without the protection of law due to the quality and corruption of law enforcement agencies.

5. Therefore, ALRC wishes to reiterate the features of the practice of torture that remain valid because of unchanged conditions in Myanmar. As delineated in an earlier submission (A/HRC/22/NGO/41):
- a. The practice of torture is systemic. Officials at all levels of the police hierarchy, courts, administration, and hospitals are aware of its occurrence; are involved actively; and are either tacitly complicit or condone it. Superiors do not prohibit the use of torture by subordinate officers. They only react to it by warning not that it is illegal or a violation of human rights, but that if the torturers go too far and the victim dies then the police officers will, despite their pretenses to the contrary, have trouble.
 - b. The police often know that the victims of torture are innocent. The police may be acting to protect actual offenders, may not know who the actual offenders are, or do not have the means or inclination to find them within the short time available to solve cases in order to satisfy requirements for administrative efficiency dictated by their superiors. Under pressure, they find innocent persons who will not be able to resist their efforts to fabricate a case, and constantly work to convince those persons that they are actually guilty. Therefore, the purpose of torture is not to actually extract information, but merely to extract an admission of guilt.
 - c. The practices of torture are highly professionalized. The methods of torture used are those of people with extensive knowledge and training in these techniques. They are not made up on the spur of the moment but are passed down and practiced throughout the policing institutions deliberately and meticulously. The use of stress positions, sharp gravel, dangling of the victim, and other techniques described, particularly those aimed at simulating death, are used across different parts of the country in different types of cases. That the equipment of torture and rooms for its purpose are made available in ordinary police stations in rural areas also speak to its endemic character.
 - d. Other investigation techniques are extremely basic or non-existent. Where police resort to torture and attendant techniques, other methods for investigation of crimes are undeveloped. Police resort to methods such as gathering up dozens or hundreds of possible suspects at a time, and threatening and cajoling them to winnow out those who will be best suited for use as a hasty scapegoat to close the case. Not only do they not use scientific techniques, but they also resort to methods that damage or destroy

evidence, such as forcing accused to wear the clothes of victims as part of their psychological games.

e. The judiciary participates in the process of torture. Judges know that people brought before them have been tortured, whether when they are brought for the purpose of giving confession or when they retract confessions in court. However, they fail in their duties to make inquiries and protect the rights of the accused, either because they are fearful of the power of the police themselves, or because they have arrangements with the police and other officials that are in their own interests. Consequently, victims of torture in Myanmar lack any effective means to pursue recourse.

6. The ALRC also reiterates the following to the Council, and urges that the relevant United Nations agencies communicate the same to the Government of Myanmar, with a view to multilateral and bilateral programmes being established accordingly:

a. Psychological counseling and physical rehabilitation services are required for persons who have already suffered torture in Myanmar. This is both for their own benefit and also to address its continued practice. Torture will only be stopped if people who have suffered torture are able to talk about it, so that the phenomenon of torture is widely known, abhorred, and addressed societally. Survivors of torture will be in a position to do this only if they get the services and support that they need. Therefore, in any programme to eliminate the use of torture in Myanmar, the medical and rehabilitation aspect is paramount.

b. Documentation of cases must be conducted much more systematically and thoroughly. All persons who class themselves as human rights defenders should be allowed to be involved in this work. At present, the extent and scale of the use of torture in Myanmar is little understood because of the lack of attention, especially to the incidence of torture in ordinary criminal cases. Human rights defenders in the current period of political change need to reorient their work towards these types of cases, since the possibility of torture being eliminated from Myanmar requires that it be eliminated in these most common cases.

c. Analysis of institutional weaknesses in Myanmar, particularly the judiciary, prosecution, and police, must incorporate education on the phenomenon of torture more forcefully and consistently. At present, the analyses and critiques tend to be abstract, concerned with vague

notions of judicial independence, and on topics that are commonplace but are relatively comfortable for people to discuss, such as widespread corruption. International agencies, including the Special Procedures of the High Commissioner, should do as much as they can to help break open the discussion on torture and bring critical analysis of the phenomenon into their work on institutional problems, including by narrating and building analysis from specific cases.

7. The ALRC urges all parties to re-examine the matter of torture in Myanmar and put into action solutions that will produce actual impact for the citizens that live in fear every day. The ALRC hopes that this will lead to demonstrable and meaningful changes that have remained elusive so far.

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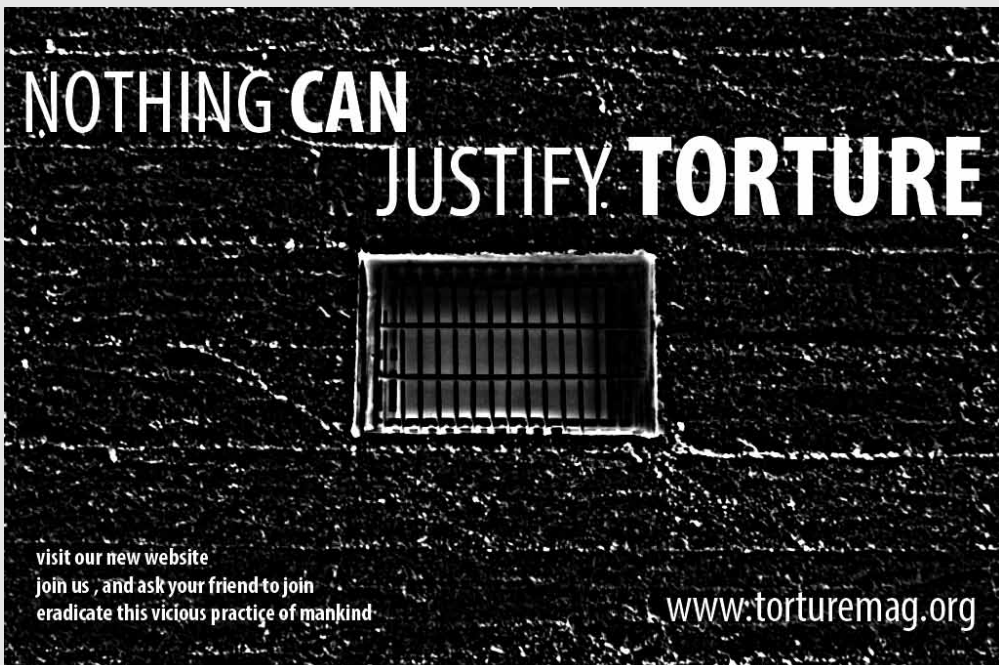
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In this issue of *article 2*

Police torture & crackdown on protests in changing Burma

*Basil Fernando, Director, Policy and Programme Development,
Asian Human Rights Commission*

■ Introduction

*Noreen, intern, Asian Human Rights Commission
Danilo Reyes, editor, article 2*

■ Crackdown on protests: exclusion of students' rights in education law

Min Lwin Oo, associate, AHRC Burma Desk

■ Myanmar: Ruling under militarized police

Danilo Reyes, editor, article 2

■ Torture by law enforcers: are Burma's police the new military?

Burma Desk, AHRC

■ Twelve stories of torture cases in Burma, 2012-15

Thein Than Oo, Myanmar Lawyers' Network

■ The legacy of dictatorship in Myanmar's judicial system

Assistance Association for Political Prisoners (AAPP), Burma

■ Burma's silent struggle: ensuring mental health of tortured political prisoners

Debby Chan Sze Wan, PhD candidate, University of Hong Kong

■ Mind of steel, heart of gold: tribute to U Win Tin

INTERVIEWS

*Dr. Aung Moe Nyo, Member of the Parliament (Pyithu Hluttaw),
National League for Democracy Party, Burma*

■ "To sign UNCAT depends on who holds the real power"

Myint Thwin, practicing lawyer and former political prisoner, Burma

■ "We have to fight against unjust law with just law"

Thein Than Oo, practicing lawyer, Burma

■ "The military not the court decides"

Aung Min Khine, a 16-year-old student protestor, Burma

■ "Students are still in jail, I can't just ignore them"

APPENDIX

■ Universal Periodic Review (UPR) submission to the UN Human Rights Council in Myanmar

■ Features of the practice of torture by law enforcement agencies in Myanmar

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Pupils from Kathikan Village, Magway Region, joining the student protest on March 2015 to call for reform in education. *Photo by Thiha Lwin*