

Chapter II

BURMA

True Democratic Reform

Impossible Without Rule of Law

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Introduction

Burma has been undergoing political reform since 2010, after decades of military rule. A general election is scheduled in 2015, which its citizens hope will be free and fair. In 2014 alone, however, large numbers of journalists, rights activists, farmers and peaceful protesters have been sentenced to jail. Their basic freedoms have been threatened, including freedom of expression, while there is no guarantee for their right to life. Journalists and peaceful protesters have been targeted by the authorities ahead of the election.

State media censorship officially ended in June 2012, with private newspapers being allowed to publish since 2013. Although Burmese citizens and media welcome these changes, the prosecution of journalists continues in the same vein as during military rule, whenever journalists publish news that the authorities dislike. They are being charged under provisions of national security and defamation of the State.

In a radio speech on 7 July 2014, the President said, “the media [*in Burma*] is one of the freest in South-East Asia”. He warned, however, that if press freedom was exploited to endanger national security rather than for the good of the country, effective action under existing law will be taken. At least 11 media workers were imprisoned in 2014.

On 7 October 2014, 3073 prisoners were released under presidential amnesty, but only a few of them were political prisoners. Although President U Thein Sein granted amnesty 17 times during his presidency, 159 political prisoners are still in prison in end December 2014, according to the Assistance Association for Political Prisoners (Burma). Nearly half of them are farmers who protested against the confiscation of their lands.

Although the 2008 Constitution allows peaceful procession and assembly, peaceful farmers' protests faced brutal crackdowns in 2014, while farmers were arrested under criminal charges and one farmer was killed. One of the leaders was tortured to death in custody in 2013. In this instance, unlike other deaths due to torture, a regional High Court overturned the lower court judgment and ruled that the cause of death was not natural. To date, however, no further action has been ordered against the perpetrators.

Burma's dysfunctional justice system allows for the misuse of laws and the use of torture to maintain military control over the population. Until justice institutions are not rendered independent from political control, no amount of reform can establish genuine democracy or rule of law.

ICCPR, Article 6

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Torture used as "investigation"; impunity rife

Where rule of law hardly functions, impunity of the military and the police is guaranteed. When the military personnel and police commit crimes in Burma, they are hardly punished in accordance with the country's criminal law. This encourages and perpetuates human rights abuses like torture.

Due to the absence of credible investigations in Burmese police stations, when a case is opened for a serious crime, many poor people are arrested as accused persons and tortured to "confess". Afterwards, police commonly claim that these persons died as a result of illness, and conspire with medical staff, prosecutors, and judges to cover up their crimes.

While a number of officers have received disciplinary action over custodial death or torture, no criminal action has ever been taken against them. Police disciplinary action under the Myanmar Police Maintenance of Discipline Law,

1995, is the end of any internal inquiry into such abuses. The following are a few torture cases reported by the AHRC:

1. U Kyaw Nyunt, farmer, 67 (at time of incident) and Nyunt Tun, are both residents of Kinpunkha Village, Natkyun Village Tract, Pakokku Township, Magway Region, Myanmar. The police accused the men of stealing a box of gold jewelry the year before. As the police could not find the missing box, and had no other evidence, they tortured the two men to confess to the crime. The police tortured Kyaw Nyunt severely. They tied his hands over his head and pulled him upwards. The police also hit him with rubber sandals, and they kicked him in the face to the point that one of his teeth was dislodged. They hit him on the back and sides with their truncheons. They hit him on the temples of both sides of his head. They also ran an iron bar under pressure up and down his knees, as can be seen in photographs taken at the time, and from the scars left permanently on his legs.

The police beat Nyunt Tun, and threatened to torture him severely if he did not confess. Nyunt Tun then gave a confession and the police opened the case in the township court. Nyunt Tun was instructed on what to say and only allowed 20 minutes with the judge. During this time the police were present, even though by law they should have been absent when the judge took the confession. After that the police forced him and Kyaw Nyunt to go to the place where the crime occurred and took photographs, as if they were reenacting the offence.

In his verdict, the judge did not deny that Kyaw Nyunt had been tortured. In fact, his verdict acknowledges that the police had appeared to torture the elderly man, which was impossible to deny given the eyewitnesses and the photographic and material evidence. However, he wrote that because it was not Kyaw Nyunt but Nyunt Tun who gave the confession, and because there was no evidence that the police had beaten Nyunt Tun and threatened to torture him, he could accept the confession as genuine. Without any other evidence, he sentenced the two men to jail. Other courts dismissed applications for appeal and review of the case. This is just one indication of how courts in Burma are a mere rubber stamp to justify or cover up acts committed by government officers.

2. Soe Lin, minor, a resident of Nawaday Road, Myayatana Quarter, Myaung Mya Township, Ayeyawaddy Region, Myanmar, was accused of murder along with his father. U Kyaw Wai was murdered in the Aung Pan salt factory, where he worked with Soe Lin and his father. The father and son were arrested on the day of his murder. The methods of torture used

on the boy included a lighter to burn his face around his eyes, burning his fingers with a cigarette 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 ear 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 still having difficulty breathing, walking, and relieving himself.

Although Soe Lin was 13 at the time of the incident, the police filed a case against him in the adult court. Moreover, before being brought to the court, he was detained in custody and tortured for nearly a month. Only with the evidence of his headmaster was his case transferred to the juvenile court. Despite all these irregularities and criminal actions by the police, no action has been taken against the errant officers.

3. Ko Nan Win was arrested on 30 May 2013 after a quantity of gold went missing from the house of U Ohn Than and Daw Myint Myint in Thabyebin Village, Patheingyi Township, where he had been doing some work on their property. Accusing Nan Win of theft, they allegedly proceeded to torture him severely in an attempt to have him admit to stealing the gold. Although the police made no progress in the case against Nan Win, on June 11, they also arrested his wife, Ma Than Than Aye, for alleged involvement and during that time they allegedly tortured her. Throughout this time both her and her husband were held illegally and their relatives were refused access to them.

On June 17, the police took Than Than Aye by boat to search for the hidden gold in Thabyebin Village: they reportedly looked in three locations and recovered nothing. According to witnesses, at the time of the search, Sub Inspector Naing Aung Kyaw kept beating Than Than Aye. As they were nearing Patheingyi at around 7p.m. in the dark, she allegedly jumped from the vessel into the Ngazun River and drowned. She was two months pregnant at the time. Although Ko Nan Win filed a case at the Patheingyi Township Court, under Penal Code Section 380, the accused was acquitted on 30 July 2014 due to lack of evidence. Furthermore, as there is no anti-torture law in Burma, torture victims have no way to seek remedies. Compensation for their loss is unimaginable.

4. U Than Htun, 42, is a resident of Kyau Inn Block (New), Dandalun Tract, Pandaung Township, Pyaw District, Bago Region, Myanmar. U Than Htun was among a group of 17 farmers involved in a land dispute, who the police allegedly threatened with violence. U Than Htun was

taken into police custody on 17 May 2013 and died from torture on May 23. Despite all evidence pointing to the contrary, the police claim he assaulted himself as a result of the effects of alcoholism. The doctor confirmed that none of U Than Htun's organs were in a condition that would cause his death. Instead, the post mortem examination showed that the skin of his two wrists was torn apart due to prolonged handcuffing, while the doctor stated that he had died as a result of bleeding inside the lungs due to broken ribs and trauma (Myanmar Police Medical Report TTH/02/13, Pandaung Township Surgeon). Although the regional court judge overturned the judgment from the lower courts and said that the death was not natural, and that someone had caused it, he did not give any instructions for further procedure. As it was not a natural death, the authorities must open a murder case, however, without such a recommendation from the judge, the authorities have not done so.

5. Myo Myint Swe (alias Kalar Gyi, Pyi Soe, Hnin Si), 39, a carpenter and labourer, lived in New Dagon (East) Township, Yangon. On 28 June 2012, 19-year-old flower seller, Ma Poe Poe Mon was murdered at her home in Ward 2 of Mayangone Township, Yangon. A week later, on June 5, police arrested Myo Myint Swe at his residence and took him to the Mayangone Township Police Station for interrogation about the murder. The police tortured him to confess to the crime, resulting in his death. Myo Myint Swe's family members took photographs of his body after the post mortem examination and before he was cremated, which show clearly that he had been severely tortured. The photographs show that the right cheek and forehead of the deceased are heavily bruised and swollen, as is the left jaw and lower cheek. The neck of the deceased is black with bruising, and scars and bruises are obvious on his shoulders and back. In another photograph of the victim's shins, scars and bruising from the rolling of a rubber or bamboo stick or similar instrument, can be seen clearly. Like in many other torture cases, only some officers were demoted, sent to remote areas, and given minor punishment under the Myanmar Police Force Maintenance of Discipline Law.
6. Aung Kyaw Naing (aka) Par Gyi, 49, a freelance journalist and former bodyguard of Aung San Suu Kyi, travelled to Kyaikmayaw Town, Mon State, to report on recent conflicts between the Burmese army and Kayan rebels in the area. He was killed and buried by the military, in direct violation of numerous legal procedures required to be followed by the army. He disappeared in end September 2014 and, on October 23, an unofficial statement without the Ministry of Defense Service letterhead was issued from Naypyidaw, stating that on 30 September 2014, at 9:30 a.m., LIB 204 headed by Caption Soe Zayar Lin, together with the

Myanmar Police Force Check Point of Kyaikmayaw Town, saw a suspect, Par Gyi, arrested him, and transferred him to LIB 208 for investigation. The letter further mentions that at 7:45 p.m. on 4 October 2014, Par Gyi requested to use the toilet. When he was allowed to do so, he attempted to grab a gun from one of the guards to escape. In response, he was shot by a guard, and died.

Notably, even though Par Gyi was arrested, neither the military nor the police opened a case against Par Gyi or obtained a court order. This is a breach of military and criminal procedure. Furthermore, if a citizen dies in a military exclusion zone, the military must file a report with the police that details, among other things, the identity of the victim. None of these or other provisions are followed in Burma, allowing police and military officers to get away with human rights violations. This merely serves to encourage further abuse and impunity.

According to a Myanmar National Human Rights statement on 5 May 2015, two soldiers accused of involvement in the killing of Par Gyi were acquitted of any crime by a summary court martial. They were tried and acquitted under Section 71 of the Defence Services Act, concerning the trial of civil offences in military court, and Penal Code Section 304, culpable homicide.

ICCPR, Article 2

1. *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*
2. *Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*
3. *Each State Party to the present Covenant undertakes:*
 - (a) *To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*

- (b) *To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*
- (c) *To ensure that the competent authorities shall enforce such remedies when granted.*

Article 14

1. *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*
2. *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law...*

Doubly Victimized: Farmers Protesting Land Grab Criminalized

A Farmland Investigation Commission report to the National Parliament states that the commission has received 26,371 complaint letters regarding land confiscation from all regions and states of Myanmar. The National Parliament has to solve the problem in accordance with the commission report and give orders to the Administrative Committee to determine who the original owners are and ensure that the land is handed back. The Parliament must further ensure that the Committee's decision is enforced.

President U Thein Sein, however, announced that the government cannot give back over 30,000 acres of paddy land that the State has been using since it was confiscated by the army two decades ago. This is contrary to the President's orders to the State and regional governments and land management committee

to cooperate with Members of Parliament to solve the problem of land grabbing cases. This government conflict is leading to the unfair prosecution and prison sentences for farmers in conflict with the army regarding their land.

According to the Myanmar President's Office official website, the President submitted a report (26-4-2014 to 24-6-2014) to the National Parliament regarding the confiscation of land by the military, ministries, regional governments, and businesses with only small amounts of compensation. There are many more cases of the government neither paying compensation nor returning the land to its owners.

Farmers from the Kanbalu Township, Shwebo District, Sagaing Division, are languishing in prison for ploughing their own fields, with another 350 more are headed for the same fate. This miscarriage of justice continues because, in the words of the No. 1 Kanbalu Township judge, the military is telling the courts what judgments to make. The situation came to a head when the military destroyed the fields of the farmers during a "training exercise", but then charged the farmers with trespass and destruction of military agricultural land. This incident illustrates the reality of the land grabbing culture practiced by Myanmar military officers, which has wreaked havoc on lives and livelihoods of farming communities across Myanmar.

A farmer falsely accused of burning a field has also been sentenced to one-year imprisonment under Penal Code Section 427 and Section 447. On 17 July 2014, 18 farmers were sentenced to jail, and another 14 farmers were sent to jail on July 18. In addition, the court summoned nine other farmers who informed the court they would not be able to attend their hearings in court on 18 July; they were then sentenced to imprisonment without any court procedure, in 18 minutes of court time. Most of them have multiple cases filed against them, despite the charges being essentially the same. Within four days, 65 farmers were sentenced, while nearly 400 farmers are awaiting verdicts. Over 450 farmers in the area have been victimised in this way.

Burmese farmers from Nyaung Wine Village, in Singu Township, Mandalay Region, who were protesting their land being grabbed by the military, were shot by police personnel from Singu Township Police Station on 14 August 2014. These farmers protested publicly several times since June, including ploughing the fields that had been taken from them. On August 14, nearly 50 police personnel with weapons and shields arrived and attacked the farmers.

Ma San Kyin Nu, a 30-year-old mother of two, who was passing by, was shot on her left calf. When villagers of Nyaung Wine Village heard the gunfire, they ran to help the farmers. Together, the villagers and farmers detained 37 police personnel who had attacked the citizens, and by then damaged the primary school and the monastery that still had monks inside. The remainder of the police personnel escaped the scene, taking one farmer, U Myint Kyi, with them to Latpanhla Police Station.

Since the new land law amendment of 30 March 2012, many farmers have attempted to get their land back, and tried to grow other crops in the field. They even sent letters of complaint regarding the confiscated land to the Land Investigation Committee, Farmland Management Committee, and other related committees, but received no response. As a result, they have been forced to make public protests. It is the right of all citizens to make complaints regarding violations of their rights, and to expect effective remedies from the state. Without this most essential aspect of rule of law, no country can truly democratize or modernize.

Conclusion

During the democratic reform period, Burma should move forward by exercising and respecting the basic rights and freedoms of its citizens. If the prosecution of journalists, activists and farmers and interference into the Judiciary by the authorities continues, it will not be possible to talk about the rule of law. To reach its goal of becoming a meaningful democracy, the government must implement domestic law according to international standards.