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BURMA: The Human Rights Situation in 2006

The myth of state stability & a system of injustice

During 2006 Burma continued to be characterised by wanton criminality of state officers at all levels, and the absence of the rule of law and rational government. Throughout the year, the Asian Human Rights Commission (AHRC) documented violent crimes caused by state officers, and the concomitant lack of any means for victims to complain and have action taken against accused perpetrators.

Three versions of violent crime in Burma

In July 2006, staff persons of the AHRC were surprised to read the assertion in the December 2005 country report on Burma of the UN Office on Drugs and Crime (UNODC) that

“As in many tightly controlled and socially conservative societies, there is very little violent crime: not even anecdotal reports of murders, rapes or kidnappings. There is some petty crime, especially burglaries, but these tend [sic] to be non-violent. In general, crime does not appear to be a major concern among the population...”

Similar statements were repeated elsewhere in the report: all of them contradict the findings of human rights defenders, independent journalists, lawyers and others which reveal that Burma is no exception from most other countries in Southeast Asia in that the primary cause of lawlessness there today is the violent crime committed by police, soldiers, local government officials and officials of mass-movement bodies, and paramilitary units.

The AHRC immediately wrote to the UNODC, and in addition to citing cases, asked the office to identify the research, studies or other work conducted by its office that have led it to this conclusion. It also raised questions about the capacity of the UNODC to function effectively in Burma:

“Where the police, state authorities and their accomplices are themselves responsible for perpetrating and instigating crimes with impunity, what possibility is there that other

criminal activities can be addressed? How can the UN Office on Drugs and Crime expect to deal with the massive narcotics trade of Burma or ‘transnational organised crime’ with which it seems more concerned than day-to-day criminality when the state agents themselves are the planners and agents of killing, torture, abduction and cross-border trafficking? How can it expect to sincerely raise questions about violence against women and children or arbitrary detention without recognition of this reality? That violent crime by state officers is the primary cause of lawlessness in Burma appears to be an enormous and glaring omission from the work of your agency there.”

The AHRC received no reply from the UNODC, and staff persons at the office who were contacted by broadcast journalists on the matter also declined to comment. However, a letter was received from the government’s representative in Hong Kong, Chan Kyaw Aung:

“We would like to inform you that the accusations you described in the letter were groundless and exaggerated. It was mainly based on information obtained from anti-government elements or neo-colonialists who just want to create unrest in our country for the sake of outside intervention. Our government’s position and policy toward law and order situation [sic] is very clear and well known...

“In any country, legal action will be taken against those who violate respective law [sic] and regulations. You can not claim the law breakers as victims of Human Rights violation [sic].”

In reply, the AHRC wrote that,

“You argue that persons who violate a country’s laws should face sanctions. In fact, this is the essence of our letter to the UNODC. Where legitimate complaints of illegal actions are made by citizens against state officers, it is a duty of the state to investigate these, and where necessary, commence prosecutions. It is a duty of the state to put in place proper institutions to receive and investigate such complaints, so that the work will be credible and the public will have confidence in its outcomes. International organisations like the UNODC may be able to assist with money and training.

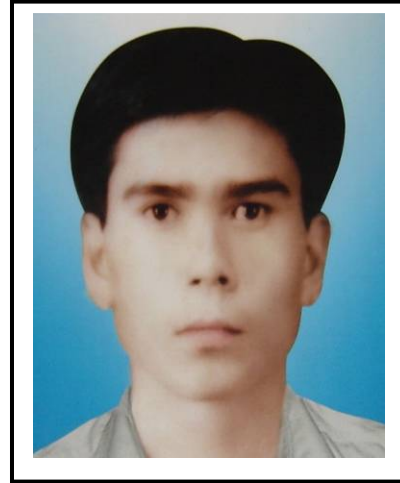
“Unfortunately, at this time in Myanmar [Burma] no such institutions exist for credible investigations of state officers. Therefore, criminality is rampant among the police and other government officials...”

Earlier, an unusual story had appeared in state-run daily newspapers. It said that a man identified as Wai Phyo Naung killed himself in a police lock up in Mandalay after being arrested for loitering in the early morning of March 25. According to the report, he had twisted his sarong into a rope and hanged himself from a bar in the ceiling at around 2pm on March 26.

The report followed a press conference in which the chief of police emerged to answer questions together with the ubiquitous military officers. A journalist from a weekly crime journal asked him,

“Due to the accusations of foreign media, there were suspicions among the public that some members of [the police] tortured and bullied the people. Are there any such incidents or not? If such incidents are found, is there any response? If there is any, to what extent action is taken against those who committed the incidents?”

In reply, Police Brigadier General Khin Yi cited the case of Ko Thet Naing Oo, which had been widely reported on from outside the country and was by that time already well known to people around Rangoon. Thet Naing Oo was beaten to death by municipal authorities and reservist fire fighters in a suburban marketplace on March 17. They had set upon him after an altercation over his supposedly urinating in a public place. His mother’s attempts to obtain justice led to a special tribunal being established to examine the case. It operated behind closed doors and ended with some innocent bicycle rickshaw drivers being charged instead of the actual perpetrators. Thet Naing Oo’s friends were also taken into custody and forced to go along with the government version of events.



Ko Thet Naing Oo
(Source: ABFSU)

It was in the past uncommon for Burma’s tightly-controlled press to carry detailed rebuttals of individual cases of alleged abuse. But with more and more stories spreading of brutality by police and local authorities, the government seems to have decided that it is better to construct its own version of reality, rather than let others come up with it first.

Interestingly, the style and content of rebuttal has more in common with that of governments in neighbouring countries of South and Southeast Asia than with the conventional propaganda to which people in Burma are accustomed. Specifically, it has two important characteristics.

Firstly, the authorities portray the victim as a person of bad character. It is then understood that whatever happened, he somehow deserved it. Wai Phyo Naung is described as having had a record of loitering, been covered in tattoos, and apparently on drugs. “His brothers told police that he was a bad youth, never listened to his parents, and used to be on alcohol,” the newspapers reported. As for Thet Naing Oo, he was a former political troublemaker who got drunk and went looking for trouble. Both were socially undesirable. If they wound up dead somehow, it was no loss.

Compare this with the language and mentality of the authorities in Thailand. When the government there organised the killing of thousands of alleged drug dealers in 2002, it set out by categorising them as people who deserved to die, who had nothing to contribute to the country. Likewise, over one thousand young men who were arrested outside Tak Bai District Police Station in Narathiwat Province during October 2004 were also described as drug users and hooligans, although these allegations were later shown to be baseless. And to the present day, reports on deaths in custody invariably dwell on the alleged wrongdoing of the deceased in order to distract attention from the actual issues. One way or another, the population of Thailand is reminded incessantly that bad people deserve bad things, and therefore, if something bad happens to someone, they must be bad.

Secondly, the authorities portray their own personnel as disciplined and following regulations. It is then understood that whatever happened, it was not the fault of the police or other state officers. The policeman discovering Wai Phyo Naung is described as springing to his aid and calling for others to help. Although they rushed him to hospital, it was too late. An autopsy was carried out which absolved the police of wrongdoing, and the matter was reported to the magistrate. Correct procedure was fulfilled. Thet Naing Oo too, it is said, was immediately sent to hospital but could not be saved. Special inquiries into the case have followed, as required by law and circumstances.

Compare this too with the case of Mousumi Ari in West Bengal, India. Mousumi was murdered by her in-laws in October 2003. However, because one of them had connections to the local police, the crime was made to appear as a suicide. The police, judicial magistrate and autopsy doctor all performed in the charade. The supposed separation of powers was reduced to farce. Only through the heroic efforts of the victim's family and local human rights defenders was the struggle against lies won, and it was finally revealed through a later independent autopsy that the death was a murder. The perpetrators were charged, although none of the authorities responsible for the cover-up have ever been punished.

Not even these few avenues exist in Burma. There are, as Brig-Gen. Khin Yi puts it, "lots of rules and regulations" with which the police are expected to comply. In fact, they are practically the same rules and regulations as in West Bengal, as a consequence of a shared colonial legacy. But lots of rules and regulations mean nothing without functioning, independent institutions to enforce them and provide redress to persons who suffer abuse. In Thailand, India and most other parts of Asia, these are few and far between. Those that exist, struggle to survive. In Burma, they are simply non-existent. There is no legislature. There is no competent judiciary. There are no independent government bodies. There are no international agencies with credible mandates to assist in reform. Nor is there any commitment to any of these.

"If a row takes place involving a police member, he faces action under the police code of conduct, civil laws, and administrative action," Brig-Gen. Khin Yi said. Were it so, Burma would be a dramatically different country from what it is today. While exceptional cases give cause for hope, such as the conviction of two police officers for rape, under existing arrangements they will remain exceptional. The norm will continue to be

extrajudicial killings, torture and other gross abuses practiced by the police, army, local government officers and other officials with impunity.

Violent crime by state officers

The growing numbers of bloody assaults and killings of ordinary people by police and other state officers in the cities and towns of Burma are in fact exposing the myth of “state stability” that the military government there uses to justify its prolonged existence.

The AHRC on July 7 issued an appeal on the alleged assault and subsequent death in police custody of Maung Ne Zaw, whose mother had fled to Thailand. Her son, she complained to the regional army commander, was stopped, illegally detained and beaten on the side of the road in Kachin State by Special Anti-drug Squad police on March 14. He died in detention on May 2, she said, after failing to obtain proper medical treatment. Even a post mortem examination was not possible. When she asked a doctor about cause of death he gave a range of implausible answers, from cerebral malaria to HIV, either out of fear or due to some tacit agreement with the police.

News of Maung Ne Zaw’s death followed reliable reports that police in Yetashe Township in Pegu Division also murdered a young mother in their custody on June 19. Ma Nyo Kyi a 23-year-old who was living in Shwemyaing ward in Myohla town was reportedly arrested earlier by Police Deputy Superintendent Zaw Lwin and another officer while on her way home from a shopping trip. Her eight-month-old baby was taken into custody with her for a night, but sent back to the family in the morning. When the family brought the baby for feeding the police on duty said that Nyo Kyi had been sent to hospital after being found hanging in her cell. However, doctors who declared her dead reportedly found severe injuries on her head and back. According to local sources, the same township police also tortured a young man to death at the end of 2005 but had warned the family against taking any action.

Soldiers taking responsibility for railway line security in the same township also allegedly beat a young man to death at the start of June. Twenty-three-year-old Maung Soe Lin Aung was the second person to be assaulted by the soldiers within a few weeks. In May, another young man was hospitalised after encountering the drunken troops on the wrong side of the tracks.

Similarly, a 24-year-old woman reportedly suffered life-threatening injuries after being assaulted by a police chief in Kyimyintaing Township, Rangoon on June 8. Ma Khin Mar Lwin, a washerwoman living in Ohbo ward, was arrested after a housewife alleged that she stole some belongings. Having arrested her, Police Station Officer Ne Myo is alleged to have beaten Khin Mar Lwin so severely that her eardrums broke and her body was covered with bruises. She was also allegedly sexually abused by a family member of the accusing person. Upon her release, Khin Mar Lwin was purportedly offered money by the family member and local officials in order to stay silent about her ordeal. However,

she is said to have refused the money and insisted that she would complain to higher authorities.

Elsewhere in Rangoon Division a man was feared dead after disappearing from police custody. U Maung Maung, a 40-year-old from Dawpon Township, was taken for questioning on June 27 after his father died in an apparent accident at home. But when family members went to see him at the police station, they were reportedly told that Maung Maung had been taken to hospital, and then on July 3 that he had escaped from the hospital. The next day, Maung Maung's son was summoned and threatened not to talk about his father's disappearance or risk arrest also.

Earlier in the year, Ko Aung Myint Oo suffered grievous injuries due to assault at time of arrest in Meikhtila, Mandalay, over a gambling case. Deputy Superintendent Aung Than Htay and around 13 other officers are reported to have savagely assaulted the young man on January 18 with various objects that they could find lying around the roadside, including sticks, rakes and bricks, until he fell unconscious. They later claimed that the victim had been brandishing a weapon; however, Aung Myint Oo had suffered from a stroke some three months earlier and was in no condition to pick a fight with the police.

The extent of Aung Myint Oo's injuries shocked the judge in the local court, who having read a prison sentence ordered the police to take the assault victim to the hospital, rather than to jail. However, the police allegedly disregarded the judge's instruction and took Aung Myint Oo to prison. But when the prison wardens saw his condition, they also refused to accept him into their custody and also insisted that he should be sent to hospital. Still the police resisted taking Aung Myint Oo to hospital. Instead they took him to a local outpatient clinic. There too the staff said that they couldn't treat his severe injuries and said to take him to hospital. Finally he was registered in the township hospital that night, with two broken ribs and severe injuries to his face and body. A week later the police came and forcibly removed him in shackles and handcuffs, despite protests from staff.

After the AHRC issued an appeal on the case and it was reported on shortwave radio, a team of four police investigators headed by township Deputy Police Commander Ko Than Htun came and searched Ko Aung Myint Oo's house and asked questions of his mother. She and his wife were subsequently called for questioning and repeatedly harassed and coerced, until they acquiesced to drop their complaints.

Not only the police, soldiers and security units but also local council officials and other state officers have been implicated in bloody assaults ending in serious injury and oftentimes death. Ko Than Htike was reportedly beaten to death in a local council office by five officials on the eve of the new year. Than Htike had had a number of personal disputes with the Myothit ward chairman and his men in Ngathaing Chaung, part of the delta region, and they had called him in over his failure to pay dues for the upkeep of a local paramilitary unit. Elsewhere, Ma Aye Aye Aung and her husband were repeatedly set upon by local council members and their relatives in Meikhtila, Mandalay over a

dispute about her parking her betel nut cart at the front of a restaurant owned by the council chairman.

Together these cases--which are just a tiny handful of the total number occurring in Burma today--reveal a society not where authoritarian rule is successfully maintaining “the stability of the state”, as promised by its military regime, but rather a country where the rule of law is non-existent and government officers are increasingly running out of control. The characteristics of violent crime by these state officers include the following:

1. The victims are ordinary people targetted in common criminal inquiries: In Burma today it is unsurprising to hear that someone has been assaulted or killed over the alleged possession of a small quantity of drugs; supposed suspicion of petty theft; urinating in a public place, or otherwise doing anything that may cause offence to local officials. None of these are the sort of celebrated political cases for which Burma usually obtains attention. But they are the sort that affects the overwhelmingly large number of people in the country.

2. The victims are mostly innocent: It is a feature of violence and other criminal or illegal actions committed by state officers against victims in Burma that the victims have nothing to do with the alleged wrongdoing, may only be tangentially related to the case or may themselves be the aggrieved parties who are being targetted as a counterattack to thwart their earnest attempts at obtaining some limited form of redress.

3. The victims are often targetted due to personal grievances or out of favours to others: The victims of assaults or other illegal acts by the concerned authorities very often know their targets, or know someone who knows them and are doing that person a favour. A person may be assaulted because of connections between the police and a local family who believe that the person has wronged them, and the party to the case may even become involved in the assault. Khin Mar Lwin was assaulted by the police on behalf of a local family; a member of which was also allegedly allowed to get involved and sexually abuse her. Ma Aye Aye Aung was beaten up because she parked her betel nut cart at the front of a restaurant owned by the local council head. Deaths occur as a result of petty disputes between local officials and persons in their jurisdiction who have refused to follow some instruction or pay some amount of money.

4. Ordinary criminal and judicial procedures are completely ignored: Where police are involved in the case from the start--as perpetrators or accomplices--or where they are brought into the case as investigators, they invariably ignore ordinary criminal procedures. Illegal arrest and detention, failure to inform of reasons for arrest or to inform family members of arrest, detention of minors and similar breaches of criminal procedure and police regulations are the norm. Maung Ne Zaw and his friends were illegally detained from the start. Ma Nyo Kyi's family were not informed that she was taken into custody. Ko Aung Myint Oo was attacked because when he was first instructed by a police officer to go to the local station with him he was not given a reason and declined to follow. The Kyimyintaing police reportedly locked up a baby. Orders given by judges

also show flagrant disregard for--or ignorance of--the domestic law and are determined strictly on the basis of instructions given from the executive.

5. There is no concept of--or interest in--investigation methods: The only techniques known to the police and other authorities who take people into their custody are to detain and beat up. If they know the person and have a particular objective, this is the method to obtain that objective. If they are not sure who they have in their hands, this is the method to find out. They learn when their family members or others come who they are and how much they can get from them. They can decide whether it is more worthwhile to let the person go in exchange for cash or proceed with a case.

6. The victims have no possibility of complaint and are instead made the targets of counter-complaints: Attempts to have a case opened are usually thwarted at early stages through a range of techniques, including open harassment and intimidation of the victim or family and counter-complaints by the authorities. Maung Ne Zaw's mother repeatedly attempted to have a case opened against the police who killed her son. As a result, she was constantly harassed, she says, and finally fled to Thailand near the end of June. The vigorous efforts to get justice by Thet Naing Oo's mother instead led to the arrest of some bystanders to her son's killing: also poor and innocent civilians. Aung Myint Oo's mother reportedly gave up attempts to register complaints against the police who assaulted her son and has since figured that if you can't beat them, join them: in her case, by working an illegal lottery syndicate with the police sergeant who instigated the violence. And whereas there is a persistent interest in security and emergency laws in Burma to deal with dissent, it must be noted that in fact the common criminal law has within it a small arsenal of provisions that enable officials to counteract private complaints, including Penal Code sections 182/189 (false information with intent to cause public servant to use his lawful power to the injury of another person; threat of injury to public servant); 211 (false charge of offence made with intent to injure); 499/503 (defamation; criminal defamation); and 504/505 (intentional insult with intent to provoke breach of the peace; statements conducing to public mischief).

All of this is to say nothing of the very severe and violent conditions for internally displaced persons, refugees and others in remote areas and border regions of the country, who continue to be subject to some of the worst human rights abuses in the whole of Asia, mostly at the hands of the military. In October the Bangkok-based Thailand Burma Border Consortium reported that over a million people are now displaced in eastern Burma alone, with 82,000 forced from their homes in the last year, through the systematic destruction or forced abandonment of over 200 villages in the same period. Out of the million persons, over half are believed to be living in the jungles and hills due to "systematic human rights abuses and humanitarian atrocities".

Degraded & compromised judiciary & a system of injustice

In September, the UN Special Rapporteur on human rights in Myanmar (Burma) reported to the new UN Human Rights Council on the country that

“The capacity of law enforcement institutions and the independence and impartiality of the judiciary have been hampered by sustained practices of impunity. I am also very concerned by the continued misuse of the legal system, which denies the rule of law and represents a major obstacle for securing the effective and meaningful exercise of fundamental freedoms by citizens.

“Grave human rights violations are indulged not only with impunity but authorized by the sanction of laws. In that respect, I consider especially as a matter of grave concern the criminalization of the exercise of fundamental freedoms by political opponents, human rights defenders and victims of human rights abuses.”

Apart from the cases of violent crime documented by the AHRC that speak to the degraded and complicit nature of the judicial system in Burma, there are numerous other persons who have attempted to complain or assert basic economic or civil rights and have instead found themselves on the receiving end of sanctions.

Among them, one of the most celebrated is Ma Su Su Nwe, who was the first person to succeed in a complaint that government officers had forced her and fellow villagers to labour on a government project without pay. She was subsequently herself charged and jailed for defamation. Predictably, her appeals for release--including to the Supreme Court--were rejected. However, she was freed on “health grounds” in June after strong interventions by the International Labour Organisation (ILO), which threatened legal action against the government and its removal from the world body if she and a number of other prisoners jailed for complaining about forced labour were not released. She has since continued to struggle to defend human rights, and in September was rightly given the 2006 John Humphrey Freedom Award, named after the Canadian drafter of the Universal Declaration of Human Rights.



Ma Su Su Nwe
(Source: PDC)



Another person released after the same heavy intervention of the ILO was human rights lawyer U Aye Myint. The lawyer was released in July after the ILO had given until the end of the month before proceeding with international legal action against the government. His appeal was pending in the Supreme Court at the time of his release. Aye Myint had served 11 months of a seven year sentence for helping a group of farmers to lodge a complaint with the ILO in June 2005 over unfair allocation of

U Aye Myint

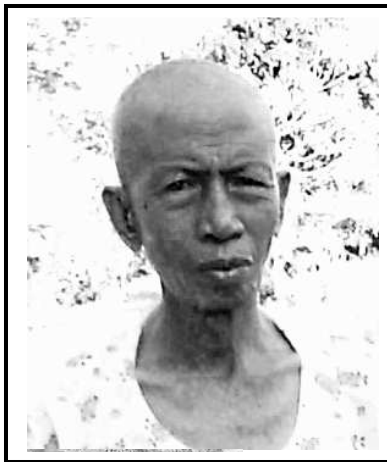
pastureland for their cattle. Upon his release, he said that he would continue to take up rights-related cases, but his legal capacity to appear in court remained clouded as his licence to practice law had been revoked.

However, there are many other lesser-known cases that speak to the same level of bravery and determination by villagers and local persons who have suffered needlessly as a result of making legitimate complaints about arbitrary and illegal state actions. They include the following.

1. U Tin Nyein has been imprisoned throughout 2006 for having complained that local authorities negligently destroyed his crops in August 2005. He was jailed through the familiar tactic of a counter-complaint from the concerned authorities, to the effect that they had been defamed. A petition against that complaint from Tin Nyein was thrown out of the Bogalay Sub-township Court without a hearing. In a second petition to the divisional court a lawyer successfully argued that the case against Tin Nyein was procedurally invalid; however, instead of ordering his release, that court instructed the township authorities to devise a new case under different provisions: an instruction without any legal validity. Notwithstanding, Tin Nyein was convicted on the grounds of causing a breach of the peace and upsetting public tranquility. Again, the conviction under these provisions was without any basis whatsoever in domestic law. The fact that Tin Nyein had seven other farmers back his claims that his land was damaged and that the authorities never contested this argument, did not make an impression upon the judge.



U Tin Nyein
(Source: Yoma 3)



U Tin Kyi
(Source: Yoma 3)

2. U Aye Min and U Win Nyunt also remain imprisoned for having made a complaint in 2005 about illegal money collections by the village authorities, which was validated by the township administrative authorities but overturned by the district administrative authorities. They too were convicted for defamation. The fact both that they were supported in their allegations by affidavits from some 28 other farmers and that local officials spoke in their defence was apparently irrelevant to the judge.

3. Farmer U Tin Kyi was sentenced to four months' jail in August for having allegedly resisted efforts to turn land neighbouring his property into a plantation under a government scheme. Sixty-five-year-old Tin Kyi, of Kyaung Gone in the western delta region, had supposedly

threatened and abused a group of workers on the site. He was sued by the council chairman and found guilty despite the admission by the chairman in court that the allegation was mere hearsay and there was no evidence against the farmer. The trial was completed and verdict read within the same day, suggesting that the judgment was prepared in advance. The land is reportedly being taken over by the son of a senior military officer, and further charges are being prepared against Tin Kyi and other farmers in the area.



Ko Win Ko
(Source: Yoma 3)



Phyoe Zaw Latt
(Source: Yoma 3)

4. Ko Win Ko and Phyoe Zaw Latt were arrested at a train station in October after they were found in possession of signatures for a nationwide petition calling for the release of five former student leaders arrested and kept incommunicado since September. The campaign was launched by colleagues of the arrested persons, and reportedly had attracted over half a million signatures from around the country: the two men had collected around 400 signatures from villagers in their area. None of the arrest, detention or trial procedures used against them

were legal under either domestic or international law. The two were falsely charged and imprisoned for 14 years: Ko Win Ko for allegedly having an illegal lottery stub in his possession; and later both he and Phyoe Zaw Latt on ordinary criminal offences of deceit and forgery, after Phyoe Zaw Latt had already been released on a good behaviour bond. The date of Ko Win Ko's hearing was changed suddenly, apparently in order to deny him an opportunity to be represented by a lawyer. The two were moved to at least five different places of detention in the first month, apparently also to deny them access to lawyers and family members. Phyoe Zaw Latt's 58-year-old mother died from grief after hearing of her son's incarceration.

Unfortunately, none of these persons are able to be visited in prison by the International Committee of the Red Cross as the group has been blocked from visiting prisoners since December 2005. In October the government also ordered five of its field offices to close, apparently without explanation.

While it is widely accepted that Burma's courts are subject to the dictates of its armed forces in cases freighted with political importance, what has not yet been studied properly is the extent of their compliance in virtually all cases where a private citizen stands against a state agent, of whatever rank, in whatever matter, and the consequences of this. Tin Nyein was first sued by a lowly member of the local waterworks team. When his case failed, it was taken up by the neighbourhood police chief. In the same township, in December 2005 U Aye Win and U Win Nyunt were jailed for reporting extortion by

junior administrators. Although the local authorities disciplined the accused, a higher office ordered that the villagers be prosecuted, again for giving false information. Last August, U Aung Pe was handed three years jail by a court ostensibly for giving “illegal tuition”, due to grudges held against him by local officials. His subsequent appeals have been thrown out without hearing. All of these cases, among many others, speak to the disgraceful condition of Burma’s judiciary.

The effective and independent functioning of Burma’s courts has been steadily eroded for decades. The assumption of power by General Ne Win in 1962 inevitably ended the possibility of the courts operating impartially. In 1974 they were dealt a death blow, when the new constitution literally merged the country’s judicial and legislative arms. Under its article 95, the senior-most judges were chosen from among the members of parliament. They in turn appointed other judges down through the hierarchy: most were handpicked from the socialist party. The first and foremost principle upon which they worked was “to protect and safeguard the Socialist system”. Their powers and duties were dictated by the government, and at each level they were answerable to local councils, just as the entire system was ultimately answerable to the executive, itself answerable to Ne Win.

The regime that brought in the 1974 constitution--together with the constitution itself--is long gone, but its mutilated legal system remains. In fact, Burma’s judiciary is today a far more degraded creature than it was a decade or two ago. Like other state agencies, the courts and law offices are staffed by persons who at best are untalented and disinterested, and at worst incompetent and ignorant. Constant meddling and interference from authorities, coupled with rampant corruption, have ruined judicial institutions and personnel. To win a private dispute is a matter of paying enough money. To win a dispute with the state is all but impossible.

However, the government of Burma seeks to maintain the pretence of legality, which can mislead observers into thinking that a partly-functioning system still exists. Detained political opponents and parties have cases constructed against them. Bizarre stories of complicated conspiracies are told in press conferences to incredulous but obliging journalists as a means to justify their detention.

In a speech during April, a retired UK lord of appeal, Lord Steyn, offered pertinent examples of how authoritarian governments consistently seek to maintain a veneer of legality:

“In Nazi Germany defendants sentenced to periods of imprisonment before the Second World War were left alone during the terms of their sentences. Only when their sentences expired did the Gestapo wait for them at the gates of the prisons and transport them to the death camps. So even in Nazi Germany an impoverished concept of legality played some role...

“In the apartheid era millions of black people in South Africa were subjected to institutionalised tyranny and cruelty in the richest and most developed country in Africa.

What is not always sufficiently appreciated is that by and large the Nationalist Government achieved its oppressive purposes by a scrupulous observance of legality. If the judges applied the oppressive laws, the Nationalist Government attained all it set out to do. That is, however, not the whole picture. In the 1980s during successive emergencies, under Chief Justice Rabie, almost every case before the highest court was heard by a so called 'emergency team' which in the result decided nearly every case in favour of the government. Safe hands were the motto. In the result the highest court determinedly recast South African jurisprudence so as to grant the greatest possible latitude to the executive to act outside conventional legal controls.

“Another example is Chile. Following the coup d’etat in September 1973, thousands were arrested, tortured and murdered on the orders of General Pinochet. The civilised and constitutionally based legal system of that country had not been formally altered. It was not necessary to do so. The police state created by General Pinochet intimidated and compromised the judiciary and deprived citizens and residents of all meaningful redress to law...

“Here I pause to summarise why I regard these examples of some of the great tyrannies of the twentieth century as containing important lessons. They demonstrate that majority rule by itself, and legality on its own, are insufficient to guarantee a civil and just society. Even totalitarian states mostly act according to the laws of their countries. They demonstrate the dangers of uncontrolled executive power. They also show how it is impossible to maintain true judicial independence in the contaminated moral environment of an authoritarian state.”

Steyn’s insightful comments are equally applicable to Burma, as they are to Cambodia, Singapore and other jurisdictions in Asia. In each of these too, safe hands is the motto. And the demoralising effect on society of courts willing to do the bidding of these authoritarian governments is far worse than that caused by other institutions. The police or military may breed resentment and spread fear when they assault an innocent person, but it comes as little surprise that police and soldiers are violent. The courts and related institutions exist to monitor and punish their excesses and abuses. They are essential weapons in the struggle against brutality and oppression. If the courts instead serve as tools for the agents of brutality and oppression, then this has a terrible draining effect on national spirit. Over a prolonged period--in Burma’s case, some four decades--the effects may be all but irreversible. They feed into and deepen the contaminated environment to which Steyn rightly refers.

The government in Burma routinely iterates its intentions to build a modern and developed state, but without functioning courts where persons with legitimate grievances can bring complaints, this is an absurd notion. It is a commercial impossibility, as investors will not commit to a place where the courts are the playthings of executive councils, which are in turn the playthings of military officers. It is also, most importantly, a psychological impossibility, as the lack of positive thinking among people in Burma is directly linked to its debased courts. If a farmer cannot make a complaint that his crops are awash because of incompetent local officials without risking jail, irrespective of other

factors, how can any progress be expected? Who will wish to repeat his experiences? Where else can they turn? What else can be done? When even natural disasters--such as the cyclone that ripped through the country's central coastline at the end of April--can be denied or diminished, how can a society properly address anything other than the most trivial and juvenile concerns? How can its courts do any more?

Burma's judges are as culpable as its generals for the demoralised state of the country today. But while no one looks to the latter for relief, even in their perverted and reduced form, the former are still sought out by persons with some hope for redress. Rarely do they give any cause for hope. Yet rarely too are they the subject of sustained criticism or sanction by persons and institutions concerned with human rights in Burma.

Conclusion

While it is attractive to describe and reduce the situation in Burma in terms of some romantic notions about democracy advocates versus military autocrats, the day-to-day lives of most people in the country are not touched either by political activists or army personnel. For most people, the state in Burma exists in the form of petty bureaucrats (at the lowest level, ten-household heads), police, teachers and others who depend upon the state apparatus for their livelihoods. As this state apparatus offers them little directly, they use its institutions and their positions in it for their own purposes. In fact, this is a description not only of localised state institutions in Burma but of the bureaucracies and law enforcement agencies in most countries throughout Asia. Whether or not there exists the appearance of a functional democracy or otherwise, at the local level most continue to operate according to historical systems of patronage and authority. It is therefore necessary to understand and critique the obstacles to human rights and the rule of law in Burma in these terms.

It is also necessary to pay special attention to the judiciary. It is easy to sum-up the judiciary in Burma by saying that it is not independent; it is under state control. This is not enough. It does not get us any closer to an understanding of what is going on in that judiciary. Compromised or not, the judiciary occupies a special place in any system of government as, in principle, a defender of rights. Despite the decrepit condition of the courts in Burma, still there are victims and lawyers arguing human rights cases before them; there are still persons with some hope of a favourable decision in such cases. These demand our continued attention and scrutiny.

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