



Tuesday, 19 December 2006

Vol. 1, No. 9

jynbē pwl f t i f w m e u b w i f p m a p m i f u l t m & s / t c h t a & ; a u m f & s i j r e f m e l i f t w f w & m ;  
Oya' p h t a & ; E s h v t c h t a & ; q l l m u p & y r m ; u b & e l a p & e f w i f y x m ; j c i f j z p o n ?

Pyithu Hittaing is a bilingual e-newsletter on rule of law issues and human rights in Burma, initiated by the Asian Human Rights Commission (AHRC)

Pyithu Hittaing online: <http://burma.ahrchk.net>  
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"w&m;chuborm;uae-yawmhut;riē  
uDi! ēvī m trēwu, fwiūm;wmjzpw, ?  
uamwlt m&s/t c h t a & ; a u m f & s i j r e f m e l i f t w f w & m ;  
'Douq l l m w&m;+lcy/ a&becyl rōw/  
All t y r s ; u o e f a & s t p a y v j y n b & ;  
O e j u x m e t x d u s e m w l p m a w a y ; y l p a w m h  
t a & ; , h q m i f u a y ; z l a w m i f q l l y w , ?"  
-- a&e O p r i f v G D D / A b t h t / 13 ' Z i l o m 2006

"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. The growing numbers of bloody assaults, rapes and killings of ordinary people by police and other state officers in the cities and towns of Burma are exposing the myth of 'state stability'"  
-- AHRC Human Rights Day Statement

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OPEN Vol. 1. No. 9 (PDF file): <http://burma.ahrchk.net/pdf/ph-v01n09.pdf>

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 $\mathbb{N} \otimes \mathbb{H} \otimes \mathbb{I}$   
 $\mathbb{P} \otimes \mathbb{I} \otimes \mathbb{O} \otimes \mathbb{I} \otimes \mathbb{C} \otimes \mathbb{T}, \mathbb{I} \otimes \mathbb{C} \otimes \mathbb{I}$   
 $\mathbb{X} \otimes \mathbb{I} \otimes \mathbb{N} \otimes \mathbb{C} \otimes \mathbb{T}, \mathbb{I} \otimes \mathbb{N}$   
 $\mathbb{P} \otimes \mathbb{I} \otimes \mathbb{V} \otimes \mathbb{A} \otimes \mathbb{T} \otimes \mathbb{M} \otimes \mathbb{I}$   
 $\mathbb{P} \otimes \mathbb{O} \otimes \mathbb{M} \otimes \mathbb{O}$

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" ..... It is the SLORC that is taking all the responsibilities of Myanmar Naing Ngan. It is the  
SLORC that is serving as an interim government before a government created by a constitution  
comes into being....."

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x&u&umijrefmEli&w0f v&ut ajc t aew0f z&pnfyht ajcc0ya' r&u&umit xift &n; aw&Eli&on?  
x&u&umiv&v&u , clyp' %&sv&xm; aom Oya' yk' r&n jyp&ajrmu&elvt yonht \*fj  
&yfjynp&oma=umi&r&n; , 0f v&u&onulw&Eli&on? pprufy&f q&lonq&lonht csuf&v&n&ay:  
aygu&ci&r&lonht w&uf yk' r 121 (u) (c) (\*) w&ut &vn&ay: aygu&r&lonht w&uf rlv t rppf  
c&lynm&&v&m; o&u&rsm; u (p&it&su& pmsu&Eli& 33 w0f) w&m; c&te&x&ef0dyg (\*) 0&w& jyk' r  
aqmi&&u&r\_on&jyp&q&li&m0ya' yk' r 121 (C) ygjyXme&csulit& azq&u&umifay: aygu&b&jizh  
jyp&q&li&m0ya' yk' r 122 (1) t &Eli&wmiifp&hazgu&zsul&e&u&u&u&v&e&ma&m&u&on?  
[ &umuf, b&oyl w&m; c&hsm; t m; v&u&wou&w&u&ef' %f t o&ob&us&ap [ p&ic&h&ic&ionf  
jyp&q&li&m0ya' jyXme&csulit sm; Eshit n& [ lvy&v&r&n; p&haumuf, b&oyc&u&umif xib&n; p&haw&  
&Eli&yon?

(2) w&m; &h. p&iy&ic&lit m% m

u? wllw&efcsuft & T t rjzplyh; on&e, &ajra' or&n &sfjyné, ft w0f jzplyh; clon&rcif  
jzpon?

1? yxrt u&r&n o&ayj&te, f p&e&us&u&s&h&jzpon?

2? 'kw& t u&r&n vm; &g&r&h&jzpy&D

3? ww& t u&r&n awmi&u&h&jzpon?

jyp&q&li&m&usix&0ya' yk' r 177 w0f jyp&rwll w0f bmrmeft m; jizip&u&v&e&m e, &ajr t w0f/  
p&iy&ic&lit m% m&om w&m; &hu&p&or&pp&aq; p&i&ap&r&n [ jyXme&xm; &lonht jyif w&m; &hsm;  
vup&tyl f 20 (3) t &vn&r&lv t r t rsv f 233 \$ 2005 u&bmrmeft m; jizih&sfjyné, ft w0f w0f  
omrmeft m; jizip&aq; p&i&r&n&jzpon?

o&omjyp&q&li&m&usix&0ya' yk' r 178 w0f usix&0ya' yk' r 177 w0f rnb&iy&f&apumrl  
c&h&w&ck&w0f p&aq; p&i&ef v&tywif y&omrnb&onht rsm;/ o& [ kwf t r t r t pm; rsm; u&h&q&  
pu&&swll w&ck&w0f p&aq; p&i&ef Eli&wmiifor&vun&um; Eli&on?

o&mw0ft qly&n&um; csunf T usix&0ya' yk' r 526 t& , ci&u&u&wif x&wfy&xm; aom  
w&m; v&v&awm&cy&n&um; csulw&v&m&Esh&e&us&ic&i&r&ap&/ x&u&umih, c&trw0f Eli&wmiifor&v



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ppaq;p&iEllrnjzpon?

c? xLubjprql&musi&Koya' uyxmefxm;onht wufw&m;&hrm;. vlyllc&hespyfvofl  
1989 c&pfZ&v (22)&u&eplyg treftrsvl(34\$89)jzihjrefmEllfllgvlyfefa&jyif twf  
ut;v&onl[ kpy&el&orm; tay: trrm;ppaq;&mwff tqibjap&efESbi&vmaom  
ire, lw&m;&hrm;wffppaq;p&iEll&ef(8)ire, lullw&m;&hcyuowfsvay;clon?

, cltrwff&sfjyn&, ftwffjzplyn;clom trjzpojzih txu&zjyygt wff Ell&hwmlorlv u  
jyprql&musi&Koya' ylf 178 ulu&ibll tjcme, hjra' ojzpaom &elufwff/ ajrmuylfc&ll/  
t ifp&fA[ tt uofaxmift elppaq;p&ic&ljyonlclom trefxwfyetsul ulltrwfwfraw&yg

\*? w&m;&hcyf. 24-2-1956&uplygn&um;vnt rsvl7\$56 wff txup&w&yft wuf  
t uofaxmift wffYjzpa/ tjcmeae&mrsm;Yjzpa/ rcifwplw&mulum;emppaq;&elvt yonl  
[ k lqclvslT up&tvll&vlt yaom trefv&yulouqll&mr&icf ulppaq;onh&mZowf  
w&m;oludul lw&trsvjydr&mv#f&ht aqmuft 00 jyiyol&on;a&mul rcifrm;ul&um;em  
ppaq;Ellc&h&umif ulowjy&rnll [ ln&um;xm;on?

, cltrwff&elufwfflw&m;olud 21-2-2005 ae&vffw&m;&hcyf. (18-2-2005) ae&lyg  
treftrsvl37\$05 t&z&pn&vlu&om w&ulwfflw&m;olud Ojroft (Ou&) Eshw&ul  
wfflw&m;olud O&ic&armi&ul (t z&il)w&lypionlclomppaq;p&ic&elvjymifay;vlu&umif  
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w&m;clrm;&h&sol&clcyzih&mul&onpojzih tra&ofsvwrfu&om;clm aemuqllw&m;clrm;  
ulltjyay;onh(2-11-2005)ae&tx&olclom trw&ep&ofsvwrfwff t ifp&ft uof axmif  
e, hjrt wffppaq;p&ic&icfjzpaomvnl/ x&h&mwff=um;emppaq;p&ic&ha=umifv&O  
azjyxm;jcifr&bnulw&on?

C? cl&h&zponht wufT n&um;cu&eshouqllr&f r&qEllay/ cl&h&zvlu&onht wuf  
t ifp&ft uofaxmift el&on;a&mulppaq;c&ll&onl rnbont r&ef&sr&sv&ervl rsvl, ll &rnll  
r[ lw&ay/ txlojzihcl&w&m;olud Ou&ESfcl&ht z&ilw&m;oludw&onl&elufwff w&uf  
w&m;oludrm;jzpfuojzih, ifw&lw&m;&hrm;&jylyzplygon? x&h&umihwfflw&m;&h. jyiywff  
on;a&mul trppaq;&elup&ay:aygu&vmv#f, ifol&ay:aygu&vmaoma=umihjyiy  
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txu&zjyygn&um;surm;t &t ifp&ft uofaxmift elppaq;p&ic&icifrln  
jyprql&musi&Koya' yjyxme&f&surm;/ w&m;&hrm;vlu&em&efw&m;&hcyf&svxwfyetclonh  
n&um;surm;ESlulh&icifr&ll t xcl&h&uppaq;p&ic&clonulw&on?

w&m;clm;u p&suwifjy u w&m;clm;t aeji h w&m;v k u r s w i j y p p a q ; d o n h o u a o r m ; t e u f  
r d j y e l v n a c ; , p p a r ; v h o m o u a o r m ; & u j y e l v n a c ; , p p a r ; E l l & e j y p r q l l m u s i h x l o y a ' y l r  
256 w l f j y x m e l t c o h t a & ; a y ; x m ; o n l x l t c o h t a & ; o n f w &m;clm;u w&m;v l .  
p p e s u r m ; u j y e l v n a c y E l l & e f t w l u d y a ' u c o j y x m ; o n h t c o h t a & ; j z p o n l x l u m i h  
, c k t r w o f

(9-9-2006)aeəvɒf, u ɛsloʊɪfɪwɪzɪpmɪn;t&xɪbʊhoʊnɪvæxɪl&ma'owɒæxɪf  
 ʃiɪr&ɪwɪm=umɪfɪwɪfɪɔnɪt ay: w&m;ɔɪn;. a&θɜːm;uɪlɛsɪjɒnɪ[ɪswɪrɪwɪl w&m;ɔɪ  
 n;m;ʊpɪ&əqɪmɪ&ʊɔɪɪrɪŋ ɔya' t&vɛpɪrɪŋ; ɒæyɒn?  
 tɒ, ɪ=umɪfɪɔmɪ-

, if&#x26;#x2013; tyll6 w0fw&#x26;#x2013; you&#x26;#x2013; how00ulps&#x26;#x2013; u&#x26;#x2013; w&#x26;#x2013; j&#x26;#x2013; y&#x26;#x2013; a&#x26;#x2013; e&#x26;#x2013; m&#x26;#x2013; u&#x26;#x2013; f&#x26;#x2013; w&#x26;#x2013; c&#x26;#x2013; h&#x26;#x2013; j&#x26;#x2013; e&#x26;#x2013; a&#x26;#x2013; c&#x26;#x2013; v&#x26;#x2013; l&#x26;#x2013; on&#x26;#x2013; l&#x26;#x2013; a&#x26;#x2013; w&#x26;#x2013; m&#x26;#x2013; i&#x26;#x2013; q&#x26;#x2013; u&#x26;#x2013; e&#x26;#x2013; v&#x26;#x2013; #/ w&#x26;#x2013; o&#x26;#x2013; u&#x26;#x2013; o&#x26;#x2013; n&#x26;#x2013; f&#x26;#x2013; p&#x26;#x2013; z&#x26;#x2013; u&#x26;#x2013; b&#x26;#x2013; a&#x26;#x2013; e&#x26;#x2013; r&#x26;#x2013; s&#x26;#x2013; m&#x26;#x2013; / t&#x26;#x2013; r&#x26;#x2013; y&#x26;#x2013; l&#x26;#x2013; i&#x26;#x2013; v&#x26;#x2013; i&#x26;#x2013; t&#x26;#x2013; m&#x26;#x2013; n&#x26;#x2013; e&#x26;#x2013; i&#x26;#x2013; f&#x26;#x2013; a&#x26;#x2013; p&#x26;#x2013; i&#x26;#x2013; y&#x26;#x2013; d&#x26;#x2013; r&#x26;#x2013; v&#x26;#x2013; b&#x26;#x2013; l&#x26;#x2013; r&#x26;#x2013; a&#x26;#x2013; c&#x26;#x2013; a&#x26;#x2013; p&#x26;#x2013; e&#x26;#x2013; f&#x26;#x2013; t&#x26;#x2013; u&#x26;#x2013; b&#x26;#x2013; y&#x26;#x2013; &#x26;#x2013; r&#x26;#x2013; n&#x26;#x2013; f&#x26;#x2013; / i&#x26;#x2013; n&#x26;#x2013; e&#x26;#x2013; u&#x26;#x2013; m&#x26;#x2013; x&#x26;#x2013; m&#x26;#x2013; o&#x26;#x2013; n&#x26;#x2013; u&#x26;#x2013; b&#x26;#x2013; w&#x26;#x2013; o&#x26;#x2013; n&#x26;#x2013; ?

(\*) rlv&nonfw&m&cl&yf. ne&um;v& tr&w(3S66) y&n&um;cs&ul&v&le&ma&qmi&&ub&h  
 jci&r&=um&it&x&ift&&n&aw&&&on?

(4) jypf %ay;ci fEs bouqll bonjXme fcsur sm?

wɪŋqDya' t & wOɔwa, muəomol. ɔvvrɪfɒnbɔjcm;jyprɛʃhɛprɔaomɪnfəumɪf/ Eɪpɪ  
rɪxuyɪl aomɪnfəumɪf/ ajrmuɛɪlɪfɒlvnr [ kwɪjypr %ɛsɜvjciɪtɪkɪlɪvɪfɪxɒɪtm;  
oɪlvnr [ kwɪwɒpɪtɪ, ɪfɪjyprwɔajrmubɒɪnfɪzɪpɪl oɪlvnr [ kwɪwɔxuyɪlɪsɪjyprwɔk  
ajrmubɒɪnfɪzɪpɪl pləvɔɪf, ɪfɪtɪcm;jyprwɔkɪnfajrmuəom ɔvvrɪtɪrɪstɪuɪl

uſ;v&homoltm; pp&q;aom&u t x uſjyprwckkt w&ufay;Eſ&hom jypf %x uſ  
yſjyifx&hom jypf %uſfay;&?

Oyrmrm;?

(u) armijzl u armieſuſw&ES h t cſuſigq, &uſ. &uſuſonſt cſuſm;uſaygiſ, iſ/  
cſuſ&wcuſp&ſ, iſarmieſt m;emusiſp&eſr&t vſt avmuſyſvſ&omjypruſarmijzl uſ;v&em  
a&muſonſ armijzl onſt cſuſwſſ t w&ufjypf %x uſbi&r nſqſygu wcuſvſſ w&Eſuſ  
Eſaygiſigq, ſxmſt uſſuſc&r nſzponſ oſmwſ&armijzl onſ&uſuſ&om t cſuſt m;vſ  
t w&ufjypf %w&yſwnſomcſſvſciſc&r nſ?

(c) oſmwſ&armijzl onſarmieſuſ&uſuſ&ecſuſarmieſuſuſ Oſ&muſp&uſzubiſarmieſuſuſ  
vnſwſri&uſuſjyeſvſſ armieſuſuſuſjciſonſarmieſuſuſ vſt avmuſemusiſapaom  
jypr uſ;v&emY ryſſiſ armijzl onſarmieſuſuſemusiſp&eſ t vſt avmuſyſvſonſt w&ufjypf %  
w&yſ xſyſarmieſuſuſonſt w&ufjypf %w&yſaygiſ 2 &yſcſſvſciſc&r nſ?

1973cEſp&um;&yſrm;t euſt "ſy zſſqſ&Oya'yſſr 22 wſſ  
jyſvſſr (oſſ [ kw) yſuſuſſr w&onſ Oya' Eſ&yſ (oſſ [ kw) Eſ&yſx uſſom Oya' rm;t &  
jyprajrmuſſiſjypr uſ;v&eſuſ, iſ Oya' rm;t euſ Oya' w&yſjziſom w&m;p&ſſt jypfay;&r nſ  
jyprw&yſwnſ t w&ufjypf %w&uſſx uſſ r&ſp& [ hom Oya' jyXmeſcſuſuſw&m;pſ  
t zſſt pnſrm;Eſh jypf %cſſſvſay;onſhw&m;&awmſ c&awmſu vſuſemaqmi&uſſciſſr&uſmiſ  
aw&onſ?

&n&ſ cſuſ? ? Tyſſr. &n&ſ cſuſſn w&m;cſwſO. ſyſvſſr Eſhpyſvſſſ jypf %uſſbmiſcyſ  
xm;&eſzponſ?

- (1) w&m;cſwſO. ſyſvſſr onſw&ciſſ t aeſziſjyprajrmuſ&eapumſſ t m;vſt w&ufwaygiſwnſ  
aomſ, iſ/ w&kt w&uſ&omſvnſaumiſomvſſ jypf %p&i&r nſ t m;vſt w&ufw&cp&ſcm;jyſ  
jypf %ſp&i&ſ?
- (2) w&m;cſwſO. ſyſvſſr onſwnſqſ Oya' t & oſſcm;jypr Eſſr ajrmuſygu wrſſ t w&uſom  
t jypfay;Eſſonſ?
- (3) w&m;cſwſO. ſyſvſſr onſw&ciſſ t aeſziſjyprajrmuſonſomru playgiſygu t jcm;jypr  
w&ajrmuſſiſ w&kt w&uſom t jypfay;Eſſonſ?

jyprqſſ&muſiſx Oya'yſſr 35 Eſſ235/ 403

jyprqſſ&muſiſx Oya'yſſr 35? ?

- (1) pp&q;p&iſr w&knſ w&ſwſOſwa, muſuſjypr\_2 cſ oſſ [ kw2cſx uſſ jypr x iſ&n;p&iſ  
onſt cg w&m;&onſjyprqſſ& Oya'yſſr 71 ygyXmeſcſuſrm;Eſhrqefuſiſp&ol w&m;&u  
p&iſyſſ cſſ&onſh, iſjyprrm;t w&ufowſſw&xm;aom jypf %ſ t oſoſuſſſſw&Eſſonſ/  
, iſjypf %ſrm;w&ſaxmiſ %jz&p&/ wuſſyſſ %jz&p&/ yſſiſyſſ xſjypf ' %ſrm;uſ  
w&yſſwnſuſſp&r nſ [ kw&m;&u t r&eſſſw&xm;onſ [ kwſſſ xſjypf %ſrm;uſ  
w&cyſſſw&cl uſſp&r nſ [ ſnſum;Eſſonſ?

- (2) jypf %ſrm;uſw&quſwnſuſſp&eſt r&eſſxm;onſt cg xſjyprrm;t w&uf  
jypf %p&playgiſſr jyprw&yſwnſ x iſ&n;ſ w&m;&u cſſw&Eſſonſ jypf %x uſſe onſqſ&ſ  
jziſjypr uſ;v&eſuſ, iſ&u t x uſw&m;&uſvſyſſciſſr ſy&? oſmwſſ

(u) rnſonſt r w&ſſ xſbſt m;wq, ſav;Eſx uſſonſhaxmiſ %cſſſvſciſſrjyſ&

(c) (ykr34 t&traqmi&ub&mZowlv&m;okuDrsvyg) t jcm;&mZowlv&m;  
okuD utruppaq;p&i v#fjypr %ppaygionf, if&mZowlv&m;okuDu, if.  
p&i yllt&ht m%mulb&psvEllonhjypr %f. 2 qxu ry&?

(3) jypf rsm; twluppaq;p&i rwcwnfwiT ykr t&csvbnfwqufwnfus&rnh  
jypr %ppaygionf t, cluppt v&hn jypr %fwckwnfjzpbntf rsvf, &rnf

jypr %ay;&mwlf xnb&fp0fpm;oibonht csufsm; Eshywbuil w&m;&hcyf. vrin&pb&if  
x&hsm;?

jypr %csv&mY jypru;v&olt ay:uv&pm;acsonbabbmr&tr [ kwbljnmay;onhoabm  
ou&mu&p&rnf wzufw&lvnf x&jypr %bnjypru;v&olt m;xyljypru;v&ecif rs  
aemifu0&p&eEsh tvm;wjypru;v&e&efu0&blwt m;t [ e&et wm;jzpa&oi&on? o&om  
v&fom;jynblw& t u&u&pmi&h&nu&ma&mu&rnfzpy&D&mZowlv&m;v&ecif r&sumu& &ma&mu&  
rnjzpbntf rnb&hjypru;v&e&v&f rnb&hjypr %f y&houm;csowrsv&xm;l r&Ellay/trw&f  
ay:aygu&vsu&om t a&umifjci&m/ t c&et cg t r t r& t pm;t v&u&t jypr %f ten&f t rsm;u&  
owrsv&rnf x&u&umifv&nf &mZowlv&m;Y jypr %u&lowrsv&xm;&mwlf ten&f, r&om  
jypr rsm;rsty/ ten&fq&csv&rnf jypr %u&lowrsv&xm;jci&r&bt rsm;q&hypr %u&bmowrsv&  
xm;onlu&w&on? t a&umif rnf w&m;&w&m;oku&rsm;t ae&jz&hjypr %lowrsv&mwlf  
t x&u&w&fz;jy&onht w&f t a&umifjci&m/ t c&e& ae&m/ t r t r& t pm; Esh t jcm;t csuf  
t v&ur&m; tay: n&ell c&ic&ef q&hzw&Ell &efzpbntf wen&f t m;jzic&h&omf jypr %lowrsv&onh  
up&onf w&m;&hsm;. q&ic&f w&w&m;t &q&hzw&onlu&pzpbntf x&u&u&q&ic&f w&w&m;t &  
q&hzw&onht cg v&v&si v&bv&lt w&lt av&mhjv&kyll owrsv&onlu&p&v&f r&ao csv&fay;xm; &ef  
rjz&Ellay? ( rpp&ic&ef &mrsm, m&Eshyn&xmi p&refm&Ell H1966 ckjrefm&Ell i p&ix&w w&m;&hcyf  
pmrsu&Ell 1448)

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w&f u&v&pm;acsonbabbmxuf jypr %csv&jci&f&ol u&wpwpjylyi&umynmay;&efzpbntf  
(armi&jz&Eshyn&xmi p&refm&Ell H1965 jrefm&Ell i w&m;p&i&h&w w&m;&hcyf/ pmrsu&Ell 378)

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## 5. VILLAGERS WHO COMPLAINED ABOUT CORRUPTION LOSE FINAL APPEAL -- AHRC Urgent Appeals desk

From: [UP-228-2006](#), 13 December 2006

[Send an Appeal Letter](#)

**The Asian Human Rights Commission (AHRC) regrets to inform you that two villagers in Burma who appealed against jail sentences for reporting about the corruption of local authorities have had their final appeal thrown out of court. U Aye Min and U Win Nyunt will now serve out their terms until the end of 2007 unless sufficient pressure can be brought on to the authorities to secure their early release.**

As reported in our original appeal and update ([UA-071-2006](#) & [UP-054-2006](#)), U Aye Min and U Win Nyunt were sentenced to two years in prison each on 2 December 2005 after informing the township authorities that their village council in Bogalay Township, Irrawaddy Division (delta region), had been illegally taking the money for on the pretence of managing an agricultural loan programme. Although the township authorities ordered the village council to stop doing this, the higher up district council later ordered that the two men be arrested for giving "false information". The first appeal of the men against the decision was also struck down by the district court.

According to the information the AHRC has now received, on 20 November 2006 the case was thrown out without a hearing by the special appeals bench of the Supreme Court, as it had been in every lower court since the two were convicted.

There are now no further judicial avenues for appeal left and the only way that the two could be released early is through heavy external pressure and executive intervention, as has happened in other cases during 2006, notably those of labour activists and human rights defenders Ma Su Su Nwe ([UP-119-2006](#)) and U Aye Myint ([UP-139-2006](#)).

Please see previous appeals and updates on cases of other villagers and farmers needlessly jailed for making legitimate complaints about the wrongdoing of local authorities in Burma, including farmers U Tin Nyein ([UA-155-2006](#)) and U Tin Kyi ([UA-292-2006](#)).

### SUGGESTED ACTION:

Please write to the Minister for Home Affairs calling for an investigation into the allegations of the two jailed men, and for their release from detention.

Please note that for the purpose of the letter, the country should be referred to by its official title of Myanmar, rather than Burma, and Irrawaddy as Ayeyarwaddy.

[Click to Send](#)

To support this appeal, please click:

### Sample letter:

Dear \_\_\_\_\_,

### **MYANMAR: Wrongful conviction of U Aye Min & U Win Nyunt in Bogalay Township Court Criminal Case No. 1334-2005 under section 211 of the Penal Code**

#### **Names of victims:**

1. U Aye Min, primary school headmaster, son of U Than Maung, Kwinpauk village, Kyisu-Kyonephar village tract, Bogalay Township, Pyapon District, Ayeyarwaddy Division; currently inmate of Pyapon Prison
2. U Win Nyunt, organiser, Union Solidarity and Development Association, son of U Thar Gyan, Kwinpauk village; currently inmate of Pyapon Prison



**Convicted under:** Section 211, Penal Code, in Bogalay Township Court, Criminal Case No. 1334-2005, Judge U Bhyein Aung; appeal summarily dismissed by Supreme Court on 20 November 2006

I am saddened to have received news that two men who brought complaints about alleged extortion by the members of the Kyisu-Kyonephar Village Tract Peace & Development Council in Bogalay Township have had their appeals against two-year jail sentences summarily dismissed by the Supreme Court.

According to the information I have received, U Aye Min and U Win Nyunt, both respected figures of Kwinpauk village in Bogalay Township, put their names at the head of a list of eight men who complained to the Bogalay Township Peace and Development Council in writing on June 30 and August 5 of 2005 that they were among 56 farmers in the locality who were ordered to pay 3000 kyat each "extra" on agricultural loans for the forthcoming 2005-06 planting season. Additionally, they were allegedly ordered to pay 400 kyat each for costs in construction of the Kwinchaung council office. They were not issued receipts. They also reported that the Kyisu-Kyonephar Village Tract Peace & Development Council had since 2002 demanded money for various local tasks without explaining to the local villagers how it would be used.

After receiving the complaints, the Township Peace and Development Council summoned U San Shwe, Chairman of the Village Tract Peace and Development Council, with council members, and reportedly warned them to return the extorted money to the farmers and not continue with the practice.

However, San Shwe and his council members accused the farmers of having falsely reported them. On September 12, Pyapon District Peace and Development Council Chairman U Ye Htut ordered the township authorities to take action against the farmers for giving false information (letter no. 2-1-2 Oo-4). On December 22 the Township Peace and Development Council sent a follow-up letter (no. 2-10-2 Oo-6) to the Village Tract Peace and Development Council, informing it to proceed with action against the farmers. As a result, the village council did not return the money that it had allegedly extorted, and began legal action against the complainants for making false allegations under section 211 of the Penal Code.

During the hearings in the Bogalay Township Court (Criminal Case No. 1334-2005), the village council members said that they only collected money in accordance with their duties. However, 28 of the farmers involved submitted affidavits to the court that the original complaint was genuine, and other farmers that had put their names on the complaint testified before the court in defence of the two accused. Members of the school committee also spoke in defence of Aye Min. Nonetheless, Judge U Bhyein Aung found that the two men were guilty and sentenced them to the maximum term of two years with hard labour on December 2. I am informed that an appeal to the Pyapon District Court was summarily dismissed in early February 2006. A further appeal to the Ayeyawaddy Divisional Court in Patheingyi also failed, as did an appeal to the Supreme Court and then, finally, to the Special Appellate Bench of the Supreme Court on 20 November 2006.

All of these appeals were summarily dismissed, speaking to the fact that the appellants were not allowed their legal rights to a full and fair hearing. Unfortunately, this case is only one among many of which I have been informed in which the courts in Myanmar appear to be operating as nothing more than tools for the exercise of executive prerogatives.

I am also aware that the government of Myanmar has made it a priority to eliminate corruption, and that it has indicated that no person should be above the law. Unfortunately, this case is among many others that show that the local government officials in Myanmar are capable of taking all forms of retribution against persons who attempt to complain of wrongdoing, even where the complainants are themselves holding offices as public servants or as members of government-sponsored agencies.

I call on you to order a full inquiry into the allegations of the original complainants against the village council members in this case. Additionally, please take immediate steps to see the men released from prison. More generally, I call on your government to make amendments to the law, and specifically section 211 of the Penal Code, in order that it is not used to convict persons making legitimate complaints.

Finally, I wish to remind you of the many concerns felt in the international community regarding the lack of effective remedies for persons wronged by state authorities in Myanmar. I urge your government to ratify the International Covenant on Civil and Political Rights without delay. This Covenant is the central plank in the international human rights regime and for so long as Myanmar remains outside its provisions there will continue to be many questions regarding the enjoyment of fundamental human rights in your country.

Yours sincerely

---

PLEASE SEND YOUR LETTERS TO:

Maj-Gen. Maung Oo  
Minister for Home Affairs  
Ministry of Home Affairs  
No. 10 Naypyidaw  
MYANMAR  
Tel: +95 67 412 040/ 069/ 072  
Fax: +95 67 412 016/ 439

PLEASE SEND COPIES TO:

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c/o Ministry of Defence  
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Fax: + 95 1 652 624

2. U Aye Maung  
Attorney General  
Office of the Attorney General  
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MYANMAR  
Fax: + 95 1 371 028/ 282 449 / 282 990

3. Mr. Patrick Vial  
Head of Delegation  
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Special Rapporteur on Myanmar  
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E-mail: [imeillan@ohchr.org](mailto:imeillan@ohchr.org)

6. Mr. Leandro Despouy  
Special Rapporteur on the independence of judges and lawyers  
Attn: Sonia Cronin  
Room: 3-060  
OHCHR-UNOG  
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Fax: +41 22 917 9006 (ATTN: SPECIAL RAPPOREUR JUDGES & LAWYERS)

7. Ms Leila Zerrougui  
Chairperson  
Working Group on arbitrary detention  
Attn: Mr Miguel de la Lama  
OHCHR-UNOG  
1211 Geneva 10  
SWITZERLAND  
Fax: +41 22 917 9006 (ATTENTION: WORKING GROUP ARBITRARY DETENTION)

8. Ms. Hina Jilani  
Special Representative of the Secretary General for human rights defenders  
Att: Melinda Ching Simon  
Room 1-040  
C/o OHCHR-UNOG  
1211 Geneva 10  
SWITZERLAND  
Tel: +41 22 917 93 88  
Fax: +41 22 917 9006 (ATTN: SPECIAL REPRESENTATIVE HUMAN RIGHTS DEFENDERS)

Thank you.

Urgent Appeals Programme  
Asian Human Rights Commission (AHRC) ([ahrchk@ahrchk.org](mailto:ahrchk@ahrchk.org))

## **6. WANTON CRIMINALITY OF STATE OFFICERS IN BURMA A GROWING THREAT**

**-- AHRC Press Release, 8 December 2006, [AHRC-PL-110-2006](#)**

The "wanton criminality" of police, soldiers and local government officials poses a growing threat to ordinary people in Burma, the Asian Human Rights Commission (AHRC) said on Friday.

Marking International Human Rights Day, December 10, the Hong Kong-based regional rights group said that Burma in 2006 remained trapped by "the absence of the rule of law and rational government".

"The growing numbers of bloody assaults, rapes 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 said in a statement.

The group said that most victims of police and others are innocent, accused of ordinary crimes or nothing at all, and may be targeted "due to personal grievances or out of favour to others".

"The officials responsible usually completely ignore ordinary criminal and judicial procedures, have no interest in genuine investigation methods, and have no possibility of complaint," the AHRC said, citing the case of a farmer who was jailed after reportedly complaining about the use of land next to his own property for a government-related project.

Complainants who were released from charges or detention remained the exception, rather than the rule, it said.

The increasing curtailment of activities by the International Committee of the Red Cross, as well as the humanitarian disaster unfolding in parts of the country also were of special concern, the group said.

"Internally displaced persons, refugees and others in remote areas and border regions of the country continue to be subject to some of the worst human rights abuses in the whole of Asia, mostly at the hands of the military," it added, citing a report in October by the Bangkok-based Thailand Burma Border Consortium that over a million people are now displaced in the east of the country due to "systematic human rights abuses and humanitarian atrocities".

The group intends to release a detailed report on human rights in Burma during 2006 in the new year.

## **7. EXTRAJUDICIAL KILLINGS, DISAPPEARANCES, TORTURE & OTHER GROSS HUMAN RIGHTS VIOLATIONS STILL ENGULF ASIA'S NATIONS**

-- AHRC International Human Rights Day Statements, 8 December 2006

[AS-304-2006](#); [AS-305-2006](#)



Discontent over malfunctioning democracies and legal systems and the consequent setbacks these shortcomings cause for human rights and the rule of law, as well as aggressively expressed aspirations to resolve such problems, are marked features that define the year 2006 in many Asian countries.

Specifically, Asia's people feel discontent over the authoritarianism of democratically elected governments as well as military regimes. They are restless over restrictions on their freedom of expression, association and assembly. They are angry at the use of martial law and emergency and terrorism laws that steal their rights in the name of making them secure. They are frustrated over rampant corruption and dissatisfied over the ineffectiveness of states to stop manifold forms of discrimination that are widely experienced throughout the continent. They are distressed as extrajudicial killings, disappearances and torture continue unabated, and they are disappointed over the ineffectiveness of parliaments, judiciaries, police forces and prosecution systems to address these deficiencies. Moreover, states are not dealing with this discontent in a positive manner by trying to resolve these problems. Instead, governments resort to even worse military and policing methods to deal with them. This is the grim picture of Asia as it approaches 2007.

In our International Human Rights Day message for 2005, the AHRC stated, "Although there are complex factors that contribute to the denial of people's rights, one factor stands clearly above all others: the rule of law does not exist in most parts of this vast continent." In the year that has followed this message, respect for the rule of law has worsened in most countries of Asia, and there is hardly any nation that can claim an improvement in this vital area, which, in fact, is the only foundation on which democracy and human rights can be built. Many more people still ask, "Where are my rights?" To this question, neither governments nor the United Nations and international community are able to give a satisfactory answer.

The absence of effort to improve respect for people's rights is very much linked to the criminal justice systems in these countries. There is a common failure to develop a criminal justice system before which everyone is equal, everyone enjoys the equal protection of the law and every violation of rights has a remedy. Such a legal system is, in fact, a far-off dream in many countries. Social elites and powerful forces within each of these societies act strongly to thwart the development of the criminal justice system. Abuse of power and corruption are severely restrained as a credible criminal justice system develops, and consequently, these elites and powerful forces seek to obstruct the development of the criminal justice system through the regimes in power. Thus, in Asia, most governments would not like to see the development of a proper criminal justice system. When the state itself prevents the development of such a system, by what means can the people achieve such an objective? The sense of powerlessness of the people expressed in many different ways in various parts of Asia arises from the strong opposition the government itself has to the development of a criminal justice system.

Arising from the state's connivance in preventing the development of a criminal justice system are the manifold forms of violence that the state in many places perpetrate on the people—abductions, disappearances, extrajudicial killings, torture and other forms of violence. States often claim these acts not only as their right but also as their obligation. Indeed, states do not plead forgiveness for violations of the basic rights of people. Instead, states claim they are carrying out their obligations as a state by engaging in extrajudicial killings, disappearances, mass murder, torture and even crimes against humanity. To this list, other human rights violations—illegal arrests and detentions, the maintenance of illegal prisons and torture chambers, etc.—can be added.

Perhaps one of the marked features of change in the nature of repression in several Asian countries in recent times is that there is not just the abuse of rights, such as illegal arrests and illegal imprisonment following the denial of a fair trial, but the dismissal by the state of trials or, for that matter, due process itself. Secret arrests, assassinations and the disposal of bodies are now means that states employ often under the pretext of responding to terrorism. The complete bypassing of legal norms and standards makes the experience of present times much more frightening.

The courts are becoming less and less important as institutions for the protection of rights and the defence of the rule of law. In many places, there is serious undermining of the Constitution through the constitutional process itself. Many of the constitutions of Asian countries are not a product of the tradition of constitutionalism that creates safeguards and limits on state power. Instead, rulers give themselves unlimited powers by creating for themselves "Constitutions" that virtually give them powers similar to those of absolute monarchs. Although some of the language of democratic constitutions is still maintained, actual power positions developed through such "Constitutions" negate the power of parliaments and courts. This process becomes even worse when the judges of higher courts themselves begin to adjust to and take advantage of the new power relationships. Subjugation to executive control, on one hand, and an increase of corruption, on the other, have become marked features of judicial institutions in many countries at the present time (for more details on this phenomenon, kindly see the consultation paper on the Asian Charter on the Rule of Law: Elimination of Corruption).

All the major struggles against discrimination are also trapped within this problem of state complicity in violence, the state's failure to protect people's rights and the collapse of the rule of law that mainly manifests itself through neglect of the criminal justice system. While there has been a great deal of discussion about women's rights and those of children, there are no signs of improvement. Sadly, violence against women and children has not been affected for the better by merely improving laws as the implementation systems remain seriously flawed. Other forms of discrimination, like that against Dalits in India and Nepal, indigenous peoples and other minorities in various parts of Asia, have seen no effective measures taken for the betterment of their lives and living conditions. While the global critique against discrimination on the basis of caste and descent has grown stronger, the internal dynamics needed to improve the lives of Dalits in India and Nepal has not changed. Lobbies that work to eliminate all forms of discrimination need to address the problems arising from rule-of-law issues if the rights of discriminated groups are to be realised.

In such contexts, none of the aspects of the rule of law are clear any longer. Do law enforcement officers have an obligation to protect people taken into custody by them? What is to prevent the person in custody from being killed? When deaths in custody occur, what is the role of magistrates? Do they really have the capacity to insist on proper investigations and to refuse to give orders stating that such killings are justifiable homicides done in self-defence? If a magistrate does their duty in the manner required by the law, can they expect the higher judiciary and the state to protect them? On the other hand, when the state, on such pretexts as anti-terrorism, associates itself with extrajudicial killings, is it in a position to prosecute state officers who fall foul of the law?

These are thus disturbing times for living in most Asian countries. No principle is any longer clear or sacred. There is no place that may be called a sanctuary or a place to resort to when everything else fails. "Who is my protector?" any innocent person caught in present-day tensions may ask. This is not a question that anyone can answer anymore.

### **Sri Lanka**

The most violent place in Asia at the moment is Sri Lanka, and the state has not taken any serious steps to bring it under control. The state blames the Liberation Tigers of Tamil Eelam (LTTE) for creating the violence in the country, and the LTTE blames the Sri Lankan government, acting through the military and its paramilitary forces, as being responsible. There is talk of "war" on both sides, but each claims to be merely in defensive military positions. Such propaganda only manifests the absence of an agent to bring the violence under control. In response to local and international criticism of abductions, disappearances, extrajudicial killings, torture and other forms of serious crimes and gross abuses of human rights, the president has appointed a local commission of inquiry, and a group of people from the international community has been given

permission to observe their work. However, this move has not created confidence or credibility inside or outside of the country.

The violence in Sri Lanka that presently afflicts the country has been aggravated by the collapse of the rule of law for a considerable time. The policing system suffers from an institutional collapse; the judiciary is faced with a serious crisis; the government lacks the capacity to carry out its normal functions of protection. Meanwhile, the enforcement of strict emergency regulations will only aggravate the violent situation, and there are no local or international initiatives to address the problems plaguing the country.

The president acted in open defiance of the Constitution and the provision of the 17th Amendment that was adopted in 2001 to deal with the crisis of the rule of law. The Constitution does not grant any power to the president to abandon the implementation of parts of the Constitution. However, the courts of Sri Lanka have interpreted the impunity of the president for acts and omissions, both official and personal, as granted under Article 35(1) of the Constitution as a blanket clause, and the judges consequently have excluded themselves from adjudication relating to acts of the president. The Supreme Court, however, did hold the president's signature to the optional protocol of the International Covenant on Civil and Political Rights (ICCPR) as *ultra vires*. In short, the courts in recent years have minimised their role in the protection of the rights of the people.

### **Philippines**

Extrajudicial killings have become a common feature of life in the Philippines during this year. Extrajudicial killings, in fact, have increased in 2006 as the government has failed to stop the killings. Promises of inquiries have not resulted in any credible measures. Task Force Usig and the Melo Commission have not proved capable of conducting any serious investigations into the killings. The absence of any deterrence through credible investigations, arrests, detentions and prosecutions offers encouragement for anyone who wishes to engage in such killings.

The moral condemnation from within the country and from the international community against the extrajudicial killings in the Philippines though has increased during the year. However, such condemnation and pressure does not seem to generate any aggressive response on the part of the government to stop the killings. The absence of a credible policy on the part of the government to stop the killings has given credence to the view that the state itself is complicit in these killings.

Aggravating these circumstances is the collapse of the institutions of justice and rule of law in the country. The police, for instance, are known to be inefficient and corrupt; but in spite of this, there is no move on the part of the state to reform the police. The judiciary is also accused of being corrupt, inefficient and slow. Thus, the mechanism of enforcement and implementation of human rights does not exist in the Philippines. International efforts to intervene to stop the killings in the Philippines have not yet developed beyond condemnation.

### **Thailand**

Respect for human rights and the rule of law in Thailand were set back many years with the return to power of the military on September 19. The military regime insisted that it had taken power to avert a national crisis; but in the following months, it has failed to produce any evidence to show that widespread violence was imminent as it claimed to justify its actions, which began with the scrapping of the people's Constitution of 1997 and its replacement with an interim charter modelled upon those of earlier military regimes. The army is now working hard to build a fictional constitutional order and resecuring power for the military elite while trying to give the opposite impression. Although it has expressed commitment to the rule of law, its actions all demonstrate the opposite.

The military government has persistently directed public attention towards the excesses of the previous administration while playing down or entirely ignoring its shared responsibility for human rights abuses of recent years. The interim prime minister has apologised for the killing of some 84 people in Narathiwat Province in 2004 but has not acknowledged the liability of the army for these deaths, least of all the 78 who died in its custody. He has ordered the security forces to cease using "blacklists" to hunt for suspects but has not yet explained anything about how they were made, who used them, which abuses occurred as a result of them and what investigations of wrongdoing will follow due to the use of the lists. Nor has his government yet lifted the emergency

decree over the southern provinces, which a U.N. expert in July said "makes it possible for soldiers and police officers to get away with murder." Martial law remains in effect across half of the rest of the country nearly three months since the military took power.

Furthermore, there has been no improvement in overall conditions of human rights throughout the country. Human rights defenders and social activists continue to be abducted and killed with impunity. Most recently, Thanet Sodsri, an environmentalist in Ratchaburi Province, was apparently shot and removed from his house on December 1. Not one case in recent years has been solved, including the disappearance of lawyer Somchai Neelaphaijit more than two years ago.

Meanwhile, a senior bureaucrat acknowledged the scale of problems in the Thai justice system by saying that the police have no evidence with which to lay charges in some 30 percent of cases that are deliberated by the courts, and, most importantly, there remains no way to complain of such abuse. There are also no laws to prohibit torture and forced disappearance or an effective witness protection scheme. Even a National Human Rights commissioner who was seriously threatened obtained no protection from the state nor did his case arouse any official concern.

### **Burma**

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. The growing numbers of bloody assaults, rapes and killings of ordinary people by police and other state officers in the cities and towns of Burma are exposing the myth of "state stability" that the military government uses to justify its prolonged existence. Most of the victims of such crimes are innocent people accused of ordinary crimes— if anything—often due to personal grievances or out of favour to others. The officials responsible usually completely ignore ordinary criminal and judicial procedures, have no interest in genuine investigation methods and present no avenues for anyone to make a complaint. Those who attempt to complain are usually made the target of countercomplaints, such as farmer U Tin Kyi who was imprisoned for having allegedly resisted efforts to turn adjacent land into a plantation under a government scheme. Although a few people linked to similar cases involving the International Labour Organisation (ILO) were released from detention, their cases and the circumstances under which they were freed were exceptional. Unfortunately, none of the people remaining in detention can be visited by the International Committee of the Red Cross (ICRC) as the group has been blocked from visiting prisoners since December 2005. In October, the government also ordered five ICRC field offices to close without apparently any explanation.

Internally displaced people, refugees and others in remote areas and border regions of the country continue to be subject to some of the worst human rights abuses in Asia, mostly at the hands of the military. In October, the Bangkok-based Thailand Burma Border Consortium reported that more than 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 more than 200 villages. Out of this population, more than half are believed to be living in the jungles and hills due to "systematic human rights abuses and humanitarian atrocities."

### **Singapore**

Singapore is the most complete authoritarian system in Asia today and perhaps also in the world. It is an authoritarian system that has entrenched itself on a small island which, due to certain circumstances, is relatively an economic success. The founder of the modern authoritarian system, Lee Kuan Yew, has consistently claimed that it is due to strong leadership that Singapore has become an economic success story. By strong leadership, he means a draconian system of control which restricts any possibility of people's participation in political affairs. That ruling is the business of the ruling political party and that the people should keep out of political affairs is a latent political philosophy that has been a pillar of the system for decades. The suppression of attempts to build a political party as an alternative to the People's Action Party (PAP) is resisted with ruthless efficiency through mainly rigorous imposition of some laws which obstruct freedom of expression and organisation.

Laws, for instance those relating to defamation, with the possibility of large sums of money being awarded to political leaders who claim to have been defamed, makes bankruptcy proceedings one of the most powerful tools in the suppression of political movements in Singapore. The notion



that political movements will lead to chaos within the country and that ethnic factors will play havoc with the situation if free political expression is allowed is part of the dogma of the state of Singapore. Singapore prevents monitoring of human rights by U.N. agencies and tacitly claims human rights as an alien concept that can harm national interests, which, in fact, mean the interests of the ruling party.

The constant suppression of freedom of expression and organisation has manifested itself in various events throughout the last few decades. The most recent example is the imprisonment of Singapore's opposition leader, Dr. Chee Soon Juan, a neuropsychologist whose crime is speaking in a public place.

Chee was imprisoned earlier this year for speaking in public on April 22 prior to Singapore's latest general election. He and other members of the Singapore Democratic Party (SDP) were speaking to passing citizens in the course of selling the party newspaper on the street.

The current sentence is five weeks in prison. Two of Chee's SDP colleagues, Gandhi Ambalam and Yap Keng Ho, were sentenced to shorter incarceration terms. All three had initially received heavy fines but have now been jailed by the Singapore Subordinate Court due to their refusal to pay. Recent reports indicate deterioration in Chee's health as a result of imprisonment.

Chee refused to pay the fine as a matter of principle. In a statement read in court on November 23, 2006, he exhorted the judiciary to recognise the "difference in punishing someone who has committed a crime versus punishing someone who is fighting for democracy and the rights of the people." Chee pointed out that criminal punishment is typically meant to either deter or rehabilitate the offender.

Imprisoning Chee for pursuing his peaceful campaign for democracy will not serve either purpose. As he put it, "What will punishing me achieve? Do you think it will rehabilitate me and deter me from doing what I am doing?"

### **Maldives**

Current abuse of the human rights of political activists, journalists and dissenters in the Maldives involve a pattern of arbitrary arrests and detentions bypassing basic guarantees of due process, such as the right to be told of the reasons for the arrest, the right to have charges served upon the arrestee and the right to trial without undue delay. While some detainees are released following international and domestic protests, others who are charged are imprisoned and then released without formal notification of the charges being dropped against them. Others are pardoned by presidential intervention while yet others are not given this same clemency. The manner in which charges are left pending evidence is a common tactic of harassment and intimidation.

Though a range of proposals towards constitutional reform have been announced (including a draft Constitution, the redrawing of electoral boundaries and the introduction of a voter education programme) with multiparty elections to be held in 2008, there is widespread public cynicism as to whether the government headed by President Abdul Maumoon Gayoom is committed to implementing these reform proposals. There is no doubt that if democratic rule is to be enhanced in the Maldives the present totalitarian authority of the presidency will need to be drastically reduced and/or replaced by a politically pluralistic framework which balances powers between the office of the presidency, a democratically functioning legislature and an independent judiciary.

It is imperative that the country's judicial and legal system is headed by a Supreme Court with judges, including the chief justice, appointed through an independent process and with security of tenure rather than the present arrangement based on dependency on the president. In addition, the Constitution needs to have a justiciable chapter on rights that can be enforced through the Supreme Court, and systematic codes of criminal and civil procedure, evidence and a revised Penal Code should be enacted as well. Moreover, the office of the attorney general must be made independent and divested of the political colour in which it is currently shrouded, and the promulgation of presidential decrees has to stop.

Furthermore, freedoms of speech and expression, association and assembly need to be secured both in law and practice. The Freedom of the Press Bill ought to be redrafted in consonance with modern-day principles and should not be allowed to give rise to new media crimes. Political

parties need to be allowed to enjoy their rights of democratic assembly and association, and practices of arbitrarily arresting political activists on charges of high treason or terrorism purely for taking part in a demonstration or engaging in comment critical of the government needs to be halted.

Lastly, bodies vested with the task of monitoring abuses by government officials, such as the National Human Rights Commission (NHRC), ought to be allowed to function independently and should be staffed by members having established credentials in the field of human rights and chosen through a process of consultation with political parties and civil society rather than purely appointed by the president.

## **Nepal**

The year 2006 has been a landmark year in Nepal and has included vast popular demonstrations against King Gyanendra and his government, which finally led to the government's demise and the creation of a new platform upon which progress toward peace, security and human rights could be built. During the period since the April uprisings, Nepal has been under a state of political flux with difficult questions being addressed step by step. By the end of the year, a comprehensive peace accord had been signed by the Seven Party Alliance (SPA) and the Maoists, bringing an end to a bloody decade-long war that claimed the lives of more than 13,000 people and seriously affected many more. The Maoists are in the process of being disarmed and brought into the political mainstream. If all parties stick to their commitments made as part of various agreements, notably that reached on November 8, then there is reason to hope that the country is heading into a period of sustained democratic development and peace. It is rare to see such sweeping changes in the course of one year, and full credit must be given to the people of Nepal and all other actors that have enabled this positive development.

However, from a human rights perspective, much remains to be done. Violations continue to be committed by all sides including abductions, torture and extrajudicial killings, and this violence will persist while the culture of impunity that has accompanied the widespread abuses of the past continues in the country. In order to ensure that impunity is dismantled, justice cannot be sacrificed on the altar of political expediency. All allegations of human rights abuses committed by any party must be effectively investigated and prosecuted in line with Nepal's international obligations. To enable these investigations to be effective, the institutions of the rule of law must be strengthened to allow them to cope with this sizeable task. Investigations and prosecutions should commence without further delay as the legal institutions can develop as the process proceeds as long as there are no undue political restrictions on their actions. It is also vital that an effective, credible and well-resourced system of witness protection be created. Otherwise, the investigation and prosecution of alleged perpetrators will fail. In the process of ensuring that the people responsible for human rights violations are held accountable, Nepal can establish a deterrent against future violations and the victims can feel secure that adequate compensation will be provided. Such a deterrent will enable a more peaceful, less fractured society to emerge. The only way to move beyond past grievances is for justice to be done. By ignoring such grievances in order to sidestep difficult issues that may threaten ongoing political progress, there may be short-term gains, but ultimately, the door will remain open to a return to violence and insecurity as those that profited from such a situation will remain protected and may later opt to offend again.

While there has been significant political progress during the year, many difficult decisions remain. It is hoped that the new political dynamics in Nepal will enable the implementation of much-needed reforms to now begin in earnest.

## **Indonesia**

There is alarm at the lack of action taken by the attorney general in prosecuting the perpetrators of the May 1998 riots and the student killings in Trisakti and Semanggi that took the lives of more than 1,000 people with many others suffering serious injuries and damage to their property and possessions. The victims of these abuses have been awaiting justice for more than eight years, which is simply unacceptable for a state that is a member of the U.N. Human Rights Council and a party to a number of U.N. human rights conventions. Because of the lack of effective investigations by the prosecution system into these gross abuses, genuinely concerned independent organisations, such as the National Human Rights Commission (Komnas Ham), have conducted their own independent investigations into these human rights violations and have submitted a formal report of their investigative findings to the attorney general. Time and time

again, however, these reports have been dismissed and discarded on the flimsy pretence of legal technicalities. Not only is the Attorney General's Department guilty of failing to undertake its own investigations into these serious abuses, but it is also guilty of refusing to act on the credible evidence accumulated by independent bodies.

This negligence raises fundamental questions about the role of the attorney general, the senior-most authority of the state prosecution system who is responsible for the impartial investigation and prosecution of perpetrators of human rights abuses and other crimes. Thus, it is the responsibility of the prosecution to ensure that effective investigations are conducted and sufficient evidence is collected to ensure a fair trial. This must be done with the highest level of impartiality and objectivity. The prosecution should not be susceptible to external political pressure and influence.

### **Pakistan**

Pakistan is still in the strong grip of a military regime. Although there was an election for Parliament in 2002, the military still controls all policy matters. The president of Pakistan still wears his army uniform and has no plan to separate the office of the chief of army staff from the office of the president of the country. Appointments to the higher judiciary are made by the president himself with the independence of the judiciary sacrificed in the process. Moreover, there are 56,000 army officers in various government and corporate positions, including communication, power and educational institutions.

Since 1998, Pakistan has been under emergency rule. Consequently, all basic rights have been suspended for the past eight years, including Articles 16, 17, 18 and 19 of the Constitution which guarantee freedom of assembly, association, speech and movement. The judiciary labours under the provisional Constitution made by the army in 2000; and since then, the judiciary has not taken its oath on the country's Constitution although the Parliament has been restored.

Since Pakistan was thrust to the forefront of the "war against terror," human rights violations have increased in comparison with previous years. Military operations in at least two out of four of Pakistan's provinces have resulted in the death of more than 3,000 people since 2001. In addition, there is no rule of law, and government agencies have a free hand to arrest anyone and torture them. Whoever is killed or tortured or fatally shot in fake encounters are labelled by the state as "terrorists." Furthermore, disappearances after arrest were first introduced in the country after 9/11, a phenomenon that was not common in Pakistan previously. There has also been a tremendous increase in the use of torture by the military agencies with new methods being employed—an illegal development that even the higher courts cannot question. Moreover, the high judiciary does not have the jurisdiction to search the military's torture cells.

Another check on the government—the media—also was under threat in 2006. More than 20 journalists were killed, tortured or disappeared by state agencies, and more than 90 cases of threats, harassment and attacks on journalists and their offices were reported. In addition, more than three FM radio stations and one television station were banned by the government's regulatory agency.

### **Cambodia**

In 2006, Cambodia witnessed a variety of human rights violations—land-grabbing, political discrimination and the repression of freedom of expression and labour rights. These abuses occurred in an environment in which the rule of law is collapsing. Some people are above the law in Cambodia as the majority of criminal cases involving high-ranking government officials have never resulted in justice. Police officers and soldiers use their guns to solve problems by threatening or shooting people, but they are never found guilty of infringing on the rights of people or breaking the law.

Large-scale land disputes between powerless people, on one hand, and private companies and high-ranking government officials, on the other, are becoming a serious problem that affects people's daily lives. No solution is presented to people who cannot cultivate their land. Injustice for the innocent is prevalent, and corruption is becoming further embedded in the political culture of the country.

## **Bangladesh**

In the area of criminal justice, Bangladesh has not taken steps towards democracy or improvement of the rule of law.

In the lower courts, it is the civil servants that exercise judicial power. This allows the police to get whatever they wish from these courts where no proper scrutiny of the papers filed by the police takes place. The result often is prolonged detention of many people who have to have recourse to higher courts to get bail through appeals. Meanwhile, while the appeal process takes place, they are kept in custody. The attempt by the Supreme Court to end the practice of civil servants exercising judicial power and to transfer this power to judicial magistrates where it properly belongs has not yet received a positive response from the government.

The corruption of the Bangladeshi police is frequently experienced by ordinary people in the country as it is often not the law but money that is behind arrests and illegal detentions. The guilty can escape through payments to the police with the innocent substituted in their place.

Moreover, the use of torture is endemic within the policing system of Bangladesh. The police are also utilised to suppress political dissent by opponents of the government and to use violence to control political or trade union demonstrations.

The most dismal aspect of human rights in Bangladesh is that there is no means by which victims can make complaints and have them investigated. The internal process of discipline within the police force itself does not exist. Even in cases where an inquiry begins due to public agitation, investigations are commonly characterised by corrupt interventions. Fundamental reform of the police is not only a necessary condition for democracy and the rule of law but also for the maintenance of any form of rational order within the country.

The Rapid Action Battalion (RAB), brought into force to deal with increased crime, is itself engaged in serious crimes, such as extrajudicial killings, torture and abductions. The concept of the control of crime is not to improve criminal investigations and to institute prosecutions but to deal with alleged criminals by extralegal means. This policy itself is an acknowledgement that the law enforcement system has collapsed under the weight of corruption. Since the law cannot be imposed through legal means due to institutionalised corruption, a more naked use of force is now used. The RAB, in effect, simultaneously acts as informers, judges and executioners.

In recent times, the chief justice and the attorney general have also come under severe criticism for being politicised and biased. All these factors cause tremendous confusion to the people and disrupt the development of more rational forms of administering society and ensuring security.

## **China**

China's struggle to replace the rule of man by the rule of law has still not reached the stage of success needed to achieve the latter. In many areas, the philosophy is still to maintain order with or without the law. Respect for the law as the final criterion in all matters has not yet become established despite claims and efforts made since the end of the Cultural Revolution three decades ago. China's economic success has not yet translated into a transformation of society that is based on the rule of law. As such, there is still fear among the ordinary people to express themselves and to participate in the life of their society in a more vigorous manner. A rule-of-law-based society cannot develop without genuine independence of the judiciary. While the educational level of judges has improved to some extent in many places, this improvement has not been the common feature everywhere.

However, the real problem area is the judicial role. The judiciary is still under political control and does not enjoy equal status with the executive. Much of the disciplinary control of the judges is carried out through party processes. This control of judges through party disciplinary processes is a hindrance to the development of an independent judiciary. The control of judicial discipline must shift to more credible internal processes of accountability from within the judiciary itself.

The role of lawyers, while having improved from their former position, has also not yet become similar to that of countries based on the rule of law. Often lawyers can be punished or harassed for acts that in normal circumstances would be considered the professional duty of a lawyer. An independent legal profession is one of the most basic requirements of the development of a system based on the rule of law.

One of China's claims in recent times is that it is struggling to eliminate corruption. However, the elimination of corruption and the development of a progressive system of criminal justice cannot be separated. On this score, mainland China has much to learn from its administrative region in Hong Kong. Since the 1960s and 1970s, Hong Kong has achieved a great degree of success in the elimination of corruption through the improvement of its criminal justice system. A component of the system introduced in 1974—the Independent Commission against Corruption (ICAC)—is not merely a corruption control agency but a very important component of the criminal justice system of Hong Kong.

It is due to the lack of improvement of the criminal justice system that China is not making attempts to eliminate the death sentence. The feeling for the need for the death sentence is itself an indication that the state does still not trust its criminal justice system to deal with serious crimes. The basic dictum that it is not the severity of the punishment but the certainty of punishment through the certainty of detection of the crime that can eliminate criminal activity has not become part of jurisprudence in China.

### **India**

India has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) with torture remaining rampant as a method of criminal investigation in the country. Even in more developed areas of India, from the point of view of the educational level of the people, like Kerala, torture is still common. The widespread use of torture occurs despite commendable judicial decisions, such as the famous *Basu vs. the State of West Bengal*, which laid down detailed rules on arrest, detention and the like, which, if applied, would lead toward the elimination of torture. The prevalence of torture is also not due to the lack of forensic facilities or forensic training available to the Indian police; for in recent years, there has been considerable sophistication achieved with regard to equipment and training. Torture though remains endemic due to other factors, such as bribery and corruption and the lack of a speedy and efficient disciplinary control mechanism. The tolerance of torture by higher-ranking officers and some prominent politicians of the central government as well as various states have not ceased. The failure of the Indian government to ratify CAT is itself a manifestation of the irresoluteness on the part of the state to bring this evil practice to an end.

In addition, India's record on delays in adjudication, including matters of criminal justice, is among the worst in the world. Court cases may go on for five or 10 years or even longer—delays in the judicial system virtually distort the whole process of justice. The prevalence of these delays prevents the possibility of judicial enforcement of the basic rights of the people. While the higher courts still produce significant judgments, the justice that the average litigant receives is still of a primitive nature. Delays allow corruption and negligence. Accusations of corruption among some of the judiciary of all ranks are now an open accusation that has not been reputed in any credible way.

Another major problem facing the country is the caste system. Despite many commitments expressed by India's best-known leaders since independence to end this great social divide, it is still one of the greatest obstacles to progress in Indian society. Dalits, or "Untouchables," for instance, are among the worst victims of torture and other abuses of human rights in the country. Dalits also suffer from delays in justice and the absence of access to justice. Thus, their misery is specifically linked to serious defects in the criminal justice system.

The absence of justice also contributes to deeply entrenched poverty and starvation. The AHRC's studies on starvation deaths have revealed that there have been deaths caused by starvation even due to the negligence of magistrates who have particular responsibilities relating to these matters.

In short, the neglect of justice in India is of such a proportion that it challenges India's claim of being a vibrant democracy. India's democracy, in fact, is fundamentally flawed and is unable to maintain the rights of its ordinary folk. The powerful, for the most part, are still above the law.

## **8. Thai army generals wag local media**

**-- Reuters, 13 December 2006**

Having ousted Prime Minister Thaksin Shinawatra to end what they called "rampant corruption", Thailand's army rulers took just 11 weeks to award themselves a 34 percent hike in military spending.

Yet the press, terrier-like in their pursuit of Thaksin in the nine months before the coup, barely mentioned -- let alone criticized -- the increase in defense spending in the 2007 budget put before the parliament the generals appointed.

As suddenly as it rediscovered its bark in January after five tough years under Thaksin, the media has lost it again under the interim army-appointed administration, say human-rights groups, analysts and journalists.

"Having stoutly defended the generals' takeover as the 'Thai way' to restore democracy and the rule of law, and shamelessly gushed admiration for their appointed prime minister, the media in Thailand is now timorous and restrained," the Hong Kong-based Asian Human Rights Commission said.

Presenting last week's proposed budget, the government said the huge increase in military spending was needed to make up for funding gaps since the 1997/98 Asian financial crisis and to counter a bloody Muslim separatist insurgency in the far south.

Typical of media coverage at the time, the Bangkok Post acknowledged the military-spending rise "would draw public criticism" -- but failed to provide any.

Under Thaksin, the pressure on dissenting voices came from many angles -- massive lawsuits, firing of editors, targeting of individual reporters, tight state control of radio and television frequencies, and government-friendly advertisers.

The Council of National Security (CNS), as the September 19 coup leaders call themselves, and its appointed administration has urged the media regularly to report "the truth" and provide "constructive criticism".

Yet an atmosphere of self-censorship has emerged in which contentious issues are avoided and the government gets the benefit of the doubt, analysts say.

At one level, the press forced itself into a broadly pro-coup stance because of its vehement opposition to Thaksin and its unrestrained joy at his removal.

However, like Thaksin, the generals are putting direct pressure on newspapers -- which are complying by and large, insiders say.

One journalist at a leading title said "senior figures" were calling up all the time to have critical reports pulled. Similarly, a popular radio-show host was suspended after a live interview with the new head of Thaksin's political party.

The revered figure of King Bhumibol Adulyadej is also playing a part due to the generals' careful packaging of their coup in the royal flag and draconian lese majeste laws that make criticism of royalty punishable by up to 15 years in jail.

"Nobody knows what the line is between the monarch and the interim government -- but anything to do with Crown, and the papers just won't touch it," said the journalist, who did not want to be named.

However, analysts said the press, which tends to give all new governments a few months' leeway, would not lie passive forever, especially if the army started meddling in the drawing up of a replacement democratic constitution.

## 9. ABOUT PYITHU HITTAING

The Pyithu Hittaing e-newsletter is being launched by the Asian Human Rights Commission (AHRC) to open serious discussion on the links between rule of law issues and human rights in Burma. While Burma has been described as under the "un-rule of law", this has not been explored in any detail. Much of the talk about human rights in Burma is restricted to references to its military regime, political prisoners, and the worst cases of abuse that persistently occur at the hands of troops operating in remote areas of the country. It is not gone deeply into the experiences of most ordinary people in the country who are daily obliged to deal with powerful local police, administrators and courts.

There are many things that are obvious to most people in Burma that have not yet been discussed directly. For instance, how is it that people who are beaten up by the police are the ones to be prosecuted? How can judges convict persons under ordinary criminal laws on grounds that have nothing to do with those laws? What are the effects on society when all attempts to lodge a complaint of abuse through the courts are unsuccessful? What happens when an administration system is staffed for generations with incompetents, and its foundations eroded by militarisation and patronage?

Each edition of Pyithu Hittaing will concentrate on and explore one or two relevant cases and incorporate some wider analysis on human rights and the rule of law in both Burma and Asia. It will do this in a straightforward way. Readers are especially encouraged to write non-technical articles on practical problems of the rule of law and human rights for Pyithu Hittaing. You may also send copies of the e-newsletter to others.

This first edition of Pyithu Hittaing is being sent to the entire AHRC mailing list. Subsequently it will go only to the Burma mailing list. If you wish to receive it but are not on the mailing list, you can

1. Go to the AHRC subscription page (<http://www.ahrchk.net/phplist/lists/?p=subscribe&id=16>), enter your email and put a tick in the box next to Country List - Burma.
2. Send an email to the editor at [burma@ahrchk.net](mailto:burma@ahrchk.net), with the subject SUBSCRIBE.

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