

## BURMA: From blinkered to market-oriented despotism?

Since a new quasi-parliamentary government led by former army officers began work in Burma (Myanmar) earlier this year, some observers have argued that the government is showing a commitment to bring about, albeit cautiously, reforms that will result in an overall improvement in human rights conditions. The question remains, though, as to whether the new government constitutes the beginning of a real shift from the blinkered despotism of its predecessors to a new form of government, or simply to a type of semi-enlightened and market-oriented despotism, the sort of which has been more common in Asia than the type of outright military domination experienced by Burma for most of the last half-century.

### *New talk, old thought, old habits*

Despite all the talk about new conditions in Burma, much evidence exists to show the contrary. One obvious indicator of worsening conditions in the country since the new government took power, which speaks to the continued hold that the military has on all affairs of any importance, is the resurgence of civil warfare in at least three states, in particular, in the Kachin regions bordering China, resulting in tens of thousands of people being internally displaced. The fighting in Kachin State began in June after a 17-year-old ceasefire broke down, and it has since spread across all parts of the state and has steadily intensified. Reports have emerged of Burma army soldiers gang-raping women and girls, and deliberately killing civilians, including some women already subjected to rape. At time of writing, the number of internally displaced people was reported to be over 40,000, who for the most part are being aided through local efforts, since authorities had blocked attempts by groups based in the country to get access to these people and systematically deliver food, medicines and supplies for shelter. The conditions of these



*IDPs in Kachin-China border (Image from Jinghpaw kasa)*

people are particularly dire given the unusually heavy rainfall in 2011.

The violence against ethnic minority groups in Burma is an outward symptom of old thinking and old habits among members of a government who are attempting to talk differently from before. While some superficialities change, the mentality of most government officials



towards minority groups is as it has always been. Sometimes, the attempt at new talk itself breaks down, such as in an interview on the BBC Burmese Service this October 24 with the director-general of the Department of Immigration and National Registration, U Maung Maung Than, concerning the status of Rohingya refugees repatriated from Bangladesh, which ran in part as follows:

“Q. What is the policy of the government towards these Rohingya refugees?”

A. For our part we merely have responsibility to scrutinize them according to whatever policies.

Q. Actually what I mean to say is that there is argument in the media, that are these Rohingya Burmese [citizens] or not, and what is the policy on that?

A. As far as we are concerned, there is no such thing as Rohingya. We have said it from the beginning. The so-called Rohingya are not among the ethnicities of Burma.

Q. That is the official government policy?

A. That is what we had discussed before. In whatever discussion wherever, we have said that the so-called Rohingya are not included among the people of our country. You can go and ask all of the people of Arakan State. All of them say that there are no so-called Rohingya.”  
[AHRC translation]

The interview with the director-general is concerning, since it illustrates (other interviews by other officials provide other similar examples) a continuance of mentalities and practices but also, either explicitly or implicitly, anti-human rights policies of past years, and the type of ethnic and religious chauvinism that has been a hallmark of authoritarian government in Burma for some decades.

Nor are these practices and policies merely reflections of individual whims or sentiments: they are deeply institutionalized and regulated, as shown over the last year on freedom of expression. Some government proponents have pointed to a relaxation of censorship as a sign of improvement. However, the extent to which censorship has in fact relaxed is questionable. It is true that publishers are able to cover more topics than previously. But despite the formal relaxing of some requirements on submission of copy for censorship prior to going to press, the government has introduced a new oversight board under the information ministry to investigate alleged violations. The board has issued a series of notifications, among which No. 46 (7 June 2011) states that it is prohibited to publish and distribute material that is contrary to the Three National Causes (non-disintegration of the union, non-disintegration of national solidarity, perpetuation of national sovereignty), the 2008 Constitution or the Official Secrets Act; that is damaging to relations among ethnic national races or religions; that upsets peace and tranquility or incites disturbances; that exhorts members of the armed services to commit traitorous acts or undermines the performance of public service duties, and so forth. The issuance of such blanket directives contradicts claims that the censorship regime is being relaxed



and raises doubts that any real space is being opened up in Burma for free expression. That “more free” expression exists in Burma today is not evidence of a shift in the conditions of human rights in the country, but a pragmatic tolerance of authorities that at this time their own objectives might be enabled through allowing for some more debate on some more permissible topics compared to previously.

### *From farmlands to factories*

The new government might not be turning battlefields to marketplaces, but it is rapidly encouraging unbridled and virtually unregulated attempts to transform the countryside from farmlands to factories, and to transform the economy more generally from a moribund authoritarian command model into one that corresponds with the new global economic realities, in the hope that a few of the country’s elite can make some quick bucks, even if it is at the expense of everyone else.

While much of the current discussion about economic reform has concerned changes to the banking system, foreign exchange, and investment laws, none of these issues go to the problems of massive poverty afflicting millions of people all across the country, or the ever-growing gap between the wealthy few and the many poor. Even in urban areas, they are not matters that have captured the attention of working people. They are reforms for the advantage of the new government’s constituency: medium to large-size businessmen connected to the military, and others connected to them in turn. Experts involved in making reform proposals seem to assume that such changes will indirectly benefit the wider population; however, evidence from all around the world shows that very often this presumption is false. The evidence from Burma so far is that a tiny percentage of the population is becoming grossly enriched through those so-called reforms that have already been introduced, while millions grow poorer.

One cause for particular concern, and one that the AHRC has followed closely, is the convergence of military, business and administrative interests in new economic projects aimed at displacing ordinary people from land. Whereas seizure of land has long been practiced in Burma, in the past land seizure was mostly carried out directly by state officials or the military. Hence, contestation over land seizure in such cases was between the state and affected citizens. Increasingly, with the changes in government and economy in Burma, private companies with connections to military officers or retired military officers are seizing land. From a human rights perspective, these cases are much more difficult to narrate, since on the surface they may be presented as a dispute between private parties. Only through close study and patient analysis do all the characteristics of the case is the nexus between military, business and administrative interests made clear. Cases that the AHRC has been following and documenting in 2011 include the following:



1. On 4 February 2011 four farmers in Kanma Township, Thayet District, Magway Region lodged a complaint that the Htoo Company, which is one of the biggest and most powerful companies in Burma, had illegally trespassed on and destroyed their land as part of a government-contracted project to make a caustic factory. The farmers alleged that a



*Villagers from Kanma travel to court by boat to contest their land  
(Image from HRDP network)*

week earlier, two army majors, one serving and one retired, representing an army-owned company that commissioned Htoo to do the project threatened that the farmers had to give up the land and accept paltry compensation or else. The court summarily dismissed the farmers' complaint. When the farmers appealed, a group of men attacked a number of them adjacent to the land under dispute, and the police then lodged a case against the farmers rather than the attackers, for alleged theft. The local court convicted the farmers. On appeal they were released on reduced sentences for time served, rather than acquitted. The land dispute that gave rise to the legal action against the farmers remains unresolved.

The UN Special Rapporteur on human rights in Myanmar highlighted this case in his 2011 report to the General Assembly:

“Whereas the Government was directly responsible for economic projects prior to 1988, private local commercial interests with strong links to the military have since emerged, complicating somewhat the respective roles of these companies and the Government in their legal complicity in human rights abuses. For example, on 18 December 2010, the Htoo construction company, owned by a powerful businessman in Myanmar with strong connections to the military, cleared the land of a group of farmers, which was under agricultural use, for the construction of a road to the site of a caustic soda and polyvinyl chloride (PVC) factory in Magway Division. On 4 February 2011, four farmers lodged a complaint about attempts by the Htoo Company to acquire their land at a greatly undervalued amount; their complaint was rejected in court on the grounds that the land was being acquired for a Government project, even though the company is private. Subsequently, a gang of about 20 men attacked a group of the farmers, injuring two of them, and a series of criminal charges were filed against the farmers. The case went to court very quickly and the farmers were convicted. Given the wave of privatizations last year, some under questionable circumstances, along with the new Government's plans to accelerate economic development, the Special Rapporteur fears an increase in land confiscation and other forms of coercion by private

sector actors in collusion with the military and Government.” [A/66/365, 16 September 2011, para. 69]

2. In November, the AHRC issued an appeal on a closely related case, arising from a new complaint lodged by a group of farmers against the construction of another caustic soda factory in Kanma. On 16 September 2011 the administration in Wegyi Village Tract, Kanma Township called farmers to a meeting to discuss the construction of a caustic soda and PVC factory in that tract. At the meeting, the farmers unanimously opposed construction of the factory, stating that they wanted to continue using their ancestral lands peacefully as they had done throughout their lives. Nonetheless, the local administration head said that the lands belong to the state and whether the farmers liked it or not the project would begin in October.



*Kanma villagers (Image from HRDP network)*

According to the farmers, the company has prepared a report on the project in which it has falsely stated that the farmers have agreed to the project. They have sent letters to the government and company officials to make clear that they oppose the project, but so far they have not received any favourable response. Rather, at a meeting on September

22 they heard from one of the retired army officers running the project that the plans are complete and the work on the factory will start soon. Therefore, the farmers were justifiably concerned about the project, but also that if they oppose it, that not only will they be unsuccessful but they will also be targeted for various types of retribution, as in the preceding case. Indeed, according to a report at time of writing, after 88 farmers submitted a letter to the president seeking intervention into the case, local authorities summoned and interrogated 35 of them throughout the night in order to intimidate them.

3. Around 2am on 25 July 2011, three bulldozers entered a historic Muslim cemetery in Meikhtila, Mandalay Region, and began destroying gravesites. After the intervention of the local Muslim community, they left the cemetery at about 11am on the same day. However, extensive damage had already been done to some graves. The cemetery is on glebe land and is fully in compliance with domestic law. It has been situated there for over 150 years, and in accordance with a government order no new burials are being undertaken there but the cemetery is being maintained as a heritage site. Local Muslim

leaders have alleged that a company wanting to take over the land for commercial activities carried out the nighttime bulldozer raid. Two company officials are former army officers, one a retired colonel, the other a captain, and the Muslim community fears that they will use their influence to force the cemetery to relocate so that the land can be used for business interests. The chairman of the committee maintaining the cemetery had subsequently submitted complaints to senior government officials requesting guarantees of protection against the attempts to demolish the cemetery and grab the land.



*Muslim residents in Meikhtila gather to stop the destruction of heritage Muslim cemetery by bulldozers*

4. Police in Rangoon on 27 October 2011 quickly broke up a small demonstration by a group of farmers who had come to have their grievances over land loss heard by gathering outside a government department. Twelve of the protestors, including land rights lawyer Ko Phoe Phyu, were taken for interrogation before being released on bail after being charged with unlawful assembly. According to Phoe Phyu, who has worked closely with the International Labour Organisation in Burma, the group was hooded during interrogation, so they could not see their interrogators or place of interrogation. The cases against he and the farmers had at time of writing not yet gone to court.

These cases are illustrative of the types of incidents now taking place by the hundreds, if not thousands, all across central Burma, and also in more remote areas where massive new dams and ports are under construction out of view of the mainstream population and without any public scrutiny or independent oversight. Although the temporary



halting of the Myitsone Dam project, in the face of growing nationwide alarm at the extent of potential consequences on the country's water lifeline, the Irrawaddy River, has been rightly described as a victory for popular demands against such projects, the fact is that these sorts of projects are taking place all over the country. Together, they speak to the evolution of human rights abuses from the state-



*Phoe Phyu, an activist human rights lawyer and advocate  
(Image from Burma VJ media network)*

versus-people dynamic of the 1980s and 90s into a much more complicated array of phenomena that require more effort to document and interpret accurately. They represent a new type of challenge for the international human rights community in coming to terms with a type of devolved military authoritarian state of the sort now found in Burma, in which aspiring technocrats take on de facto spokesperson roles for military personnel in civilian garb, and businessmen are increasingly unconstrained by ineffectual and often deliberately marginalized or coopted state agencies.

Concerns over the future of farmers and rural dwellers in Burma were heightened, rather than diminished, when during the second sitting of the new semi-elected parliament in Burma this year, the government submitted a draft land law. Rather than protecting cultivators' rights, the bill undercuts them at practically every point, through a variety of provisions aimed at enabling rather than inhibiting land grabbing. It invites takeover of land with government authorization for the purpose of practically any activity, not merely for other forms of cultivation. Under the draft, farmers could be evicted to make way for the construction of polluting factories, power lines, roads and railways, pipelines, fun parks, condominiums and whatever else government officials claim to be in "the national interest". The AHRC has identified the following aspects of the draft law that are of special concern:

**1. No improvements on existing law:** The law does not guarantee the rights of cultivators in principle to any greater degree than the existing range of law, including the 1963 Tenant Farming Law and its amending law, and the 1963 Protection of Peasants' Rights Law, which it is set to replace. The provisions under extant law that it will replace have so far done nothing to stop land grabbing by the government in collusion with major business backers, like the Yuzana, Zegamba, Htoo and Ayashwewar companies. Therefore, in terms of basic stipulations of rights and the affording of protections for cultivators, the law offers nothing new at all.



**2. Aggrandizing of executive power:** Not only does the new draft law not offer any more normative guarantees compared to its predecessors, but it proposes oversight and routine intervention on land planning matters by an executive agency, which would have as its chairman the agriculture and irrigation minister. Under the peak agency others would operate at various levels of government. Disputes concerning land would have to be addressed through these bodies before any matter could be taken before a court. Furthermore, under the draft law's section 21, the agriculture and irrigation ministry would have the power to alter or overturn any decisions taken in any one of the new land agencies. Other sections of the law grant the ministry a range of further powers that ensure that the day-to-day running of routine affairs concerning cultivatable land will, if the law is passed, remain firmly under the control of a highly corrupt and frequently incompetent ministry. These powers include, among other things, powers to evict persons from land and order the destruction of buildings, subject to the drafting of new procedural rules under the law.

**3. Denial of basic freedoms:** The draft land law denies basic freedoms to farmers to make decisions about what to cultivate on their own land. Under section 23, the president is given full authority to issue instructions over the use of land for particular purposes in any part of the country. The past record of centralized land management and planning in Burma has been one of abject failure; the list of ineptly managed and spectacularly unsuccessful projects over the last half-century is far too long to mention. In fact, the only reason that the agricultural economy in Burma has not collapsed entirely is because of the capacity of cultivators to defy or sidestep authorities' instructions on land use. The draft law, regrettably, spells only more of the same problems for farmers, giving the president all the powers to do as he pleases, and none of the responsibility when things go wrong, as inevitably they shall if this law is enacted.

In sum, the land law draft is not a forward-looking piece of legislation for the new century, but a backwards-looking and highly regressive law modelled on 1960s quasi-socialist legislation, evincing an old-style authoritarian frame of mind, but one with the interests of the new class of military-connected entrepreneurs at the fore. It is designed to ensure the primacy of the executive authorities in all decision-making events, and to keep the role of the judiciary to a minimum. It aggrandizes the functions of executive officers, and like other aspects of the new constitutional arrangements, situates dictatorial powers in the presidential office. It is a law that has been written for the interests of powerful businessmen whose companies are already causing massive hardship and misery to people in various parts of Burma, and who are lining up to grab as much territory as possible in the next few years, and to share the spoils with their partners in government.

### *No competent judiciary, no remedies for violations*

It is obvious that none of the instruments and institutions available for the making of complaint of rights abuses in Burma come remotely close to what under international standards would satisfy the requirements for remedies for human rights violations. In the



absence of an independent judiciary or minimally functioning institutions of the sort that are presumed to exist when these types of questions are discussed at the international level, nothing in the existing arrangements can be described as satisfying the requirements of international standards.

Despite the political changes of the year and associated fanfare, the judiciary in Burma remains inert, tied to the executive, and incapable of performing even basic functions for the defence of human rights. Since the start of the year, structural changes to the judiciary under the 2008 Constitution have not materialized in any meaningful way. On the contrary, the courts continue to be as closed and obscured from public view as before, perhaps even more so. For instance, at time of writing still no biographies or details have been made known publicly of the new Supreme Court justices, among whom three are believed to have come from the armed forces, two others from the civil administration. Legal professionals have doubts about the background and abilities of these persons, yet they too have no detailed knowledge about them, let alone the opportunity to discuss such matters.

Consequently, police, soldiers and other state officers or paramilitary groups attached to the state continue to be able to use and abuse their powers with impunity. Very often, they do so in the context of personal disputes, with the knowledge that the victims of abuses have no recourse. Sometimes, they act specifically in response to attempts of people to attract the attention of officials to their problems. For example, at the end of 2010 the AHRC issued an appeal on a case of a man who disappeared after a family dispute with a government official in Karenni State, in the east of the country. His abduction and disappearance by members of a ceasefire group operating closely with the local administration followed a dispute over the question of marriage between his daughter and the son of a government official. The official refused to allow the marriage and allegedly said that someone would have to die rather than have the couple wed. In December the young woman sent a letter to the state women's affairs committee to ask for assistance in the matter, and it was shortly after that that her father was abducted. To date, despite interventions of the family with the military, police, courts, prosecutors' offices and other institutions, no inquiries have been conducted into the case, and nobody brought to account.

According to the Special Rapporteur in his report to the General Assembly,

“The judiciary's capacity, independence and impartiality remain outstanding issues in Myanmar. The Special Rapporteur notes that there do not appear to be any major structural transformations within the judiciary. The new Chief Justice was formerly one of the justices on the Supreme Court, and the new Attorney General was previously a Deputy Attorney General, with no further information on new appointments to the courts.

Concerns regarding the functioning of the judiciary also remain. The Special Rapporteur continues to receive information of criminal cases being heard behind closed doors. In one case, the family of former army captain, Nay Myo Zin, was barred from the closed court inside Insein prison, on 2 June 2011. Nay Myo Zin, who left the army in 2005 and then



volunteered for a blood donor group headed by a member of the National League for Democracy, had been charged under the Electronics Act. During the proceedings, judges heard a statement from Deputy Police Commander, Swe Linn, who had conducted the search at his house, in early April 2011, and found a document in his e-mail inbox entitled “National Reconciliation”. On 26 August 2011, he was sentenced to 10 years in prison. According to reports, he appears to have been subjected to torture resulting in shattered lower vertebrae and a broken rib, which led to his attending court on a hospital stretcher. His requests for external hospitalization have also been reportedly denied. ...

Further, the Special Rapporteur is concerned at allegations of widespread corruption, which, according to many sources, is institutionalized and pervasive. According to studies by civil society organizations, payments are made at all stages in the legal process and to all levels of officials, for such routine matters as access to a detainee in police custody or determining the outcome of a case. As Myanmar achieves greater economic development, there will likely be more conflicts and contests that will need to be resolved in the courts. The Special Rapporteur therefore welcomes the Government’s stated commitment to combating corruption and urges that priority attention be given to the judiciary in this respect.” [A/66/365, 16 September 2011, para. 19, 20, 23]

The AHRC concurs, from knowledge obtained through work on the issue over some years, that corruption in Burma’s judicial system is indeed pervasive. Legal professionals say that the amount of corruption in the system is growing exponentially, as the costs of living rise and more and more judges and lawyers look to whatever opportunities they can to make as much money as they can. In some courts, lawyers estimate that up to 70 per cent of cases are decided in part or whole through the payment of money.

Nor is this a question of one person or another in the system requiring payment: from studies that the AHRC has undertaken into the mechanics of corruption in Burma, payments are made at all stages in the legal process and to all officials, from the arresting and investigating police, to court clerks, prosecutors, judges and others. Sometimes the payments are routine and petty, such as to meet a detainee in police custody and give food or medicine; at other times they are substantial and determining, such as to effect a specific outcome to a case—be it acquittal or conviction, reduction or increase of sentence or otherwise.

Clearly, the extent of corruption in the system has immense implications not only for the rights of persons in the legal system today but also for any talk about long-term improvement of human rights in Myanmar. If the institutions that will be expected to participate in building a framework for the protection of human rights are themselves completely rotten, the task will be impossible.

Human rights defenders in Burma and abroad need to pay much more attention to the extent of corruption in all areas of the criminal justice system and related institutions, not only because of the extent to which it already impinges upon the human rights of accused persons in non-political criminal cases but also because of the extent to which it is likely to emerge as a bigger problem in the next few years. The rapid increase in



commercial investment from around the region, and the growing number of conflicts and problems arising due to fast social and economic change is bound to push larger amounts of money into the judicial system, as ill-equipped courts are called upon to reach verdicts for one side or another in increasingly complicated disputes between multiple parties of the sort discussed briefly in the next part. From a human rights perspective, we need to be speaking to this issue so that when questions of institutions for the investigation of complaints and provision of redress for abuses arise it is possible to go past the superficialities about whether or not a law or institution merely exists to how, in actual fact, it operates in particular ways in response to shifting political and economic relations.

During the year, the government announced the establishment of a Myanmar National Human Rights Commission, which has started receiving complaints. The commission is comprised mostly of former diplomats, men who have spent years flatly denying the existence of human rights abuses in Burma, in the face of mountains of evidence to the contrary. It is not comprised in accordance with the internationally agreed upon Paris Principles for national human rights institutions. It does not operate under any legislation and has very vague terms of reference. From interviews of the body's chairman with media outlets, it would appear that the body upon receiving complaints will do no more than look into them itself—the extent to which it can do this is extremely doubtful, given that it does not have any significant budget or personnel with which to conduct inquiries, let alone a mandate to do so independent of other agencies—and then submit its findings to the government departments concerned. Given that government officials in Burma have, along with the members of the commission itself, a track record of denial of wrongdoing but also the capacity to respond vigorously to any such complaints with counter-complaints as well as with extra-legal measures to silence complaint, the new commission gives little cause for enthusiasm.

### *Political reconciliation by hostage taking*

Throughout 2011, most political detainees remained in Burma's jails. These people include most of those imprisoned following the monk-led uprising of 2007, as well as long-term detainees, like Ko Than Zaw, who has been imprisoned for over 22 years for a crime that he did not commit, and on whose case the Asian Human Rights Commission issued an Urgent Appeal in November. Military intelligence personnel pulled Than Zaw, an organizer for the National League for Democracy, from his house early one morning in July 1989 without explanation, before taking him to an interrogation centre where they tortured he and two other men to confess that they had committed a bombing attack on a refinery. At the end of the month, the men were brought before a military tribunal, which sentenced them to death without permitting any of them a fair hearing or defence with legal counsel. The state media published a news conference by the head of military intelligence that the accused had confessed and that they were part of a plot by the NLD to blow up the refinery. Although intelligence later detained a man who reportedly admitted to the refinery bombing, and he was also imprisoned, the three originally

accused men were not released and instead they were put on trial again with a group of other NLD members on a charge of high treason. Than Zaw was held at the Insein Central Prison, but on 25 September 1990 was accused of involvement in an inmates' protest. The prison authorities called in the army and riot police, who put down the protest with heavy violence, and he was transferred to Thayet the next day. Since that time, all other accused in the case, including the man who reportedly admitted to carrying out the bombing, have been freed, but Than Zaw has inexplicably remained held up to this day, which means that he has so far spent around half of his lifetime in custody.

The last remaining accused in prison out of the other co-accused with Than Zaw was among over 6000 detainees released from Burma's prisons in October. Also among those released was a famous comedian, Zarganar. Imprisoned for criticising the relief effort in the wake of Cyclone Nargis in 2008, Zarganar spoke to the BBC Burmese Service shortly after his release. Asked about the claims of the country's president that his government is working towards national reconciliation, and Zarganar laughingly likened this form of national reconciliation to putting makeup on a paralyzed elderly woman and taking her out on the town. He also said that he and other political detainees were like hostages, being released at a trickle in exchange for deals being struck with various parties at home and abroad.



*Zarganar after his release from prison (Burma VJ media network)*

Zarganar is correct that national reconciliation through hostage taking is a fraud. The reason that he is correct is that national reconciliation through hostage taking rests implicitly on the notion that the victim, the hostage, is expected to be grateful to the



perpetrator, the hostage-taker, for letting him go. It is premised upon the notion that the government in Burma, as a perpetrator of crimes, ought to be congratulated for acts of apparent generosity towards persons whom it has persecuted relentlessly.

Over the last few years, prisoner releases in which political detainees have also featured have been a regular event in Burma. Each release is an opportunity for the political leadership to temporarily pay the role of benefactor, and enjoy some praise for whatever largesse it has managed to generate through the freeing from detention of persons who should have never been detained in the first place, persons whose “crimes” constituted acts that in most other countries are taken for granted. It is for this reason that such releases of detainees are indicative not of a system operating according to rational law, but one operating according to feudal principles, in which a regal figure earns the gratitude of his subjects for the merciful exercise of arbitrary power.

But the method only works well when those released show the required deference to the powers that have released them. When, as in the case of Zarganar, they continue to show defiance and scorn, national reconciliation through hostage taking is, rather than being an effective political device, exposed as a fraud.

For this reason, the authorities in Burma are afraid to release many of the remaining political detainees there, including the leadership of the Shan Nationalities League for Democracy and the 88 Generation Students group, on both of whom the AHRC has previously issued appeals, since to do so would threaten the method’s effectiveness. Similarly, they have on this occasion not released most other persons on whose behalf the AHRC has campaigned for some years, including the founder of Human Rights Defenders and Promoters, U Myint Aye; persons accused of having links with exiled opposition groups and media, including Sithu Zeya and his father U Zeya; National League for Democracy member Aye Min Naing and colleagues; and, people falsely accused of involvement in bombings around the country, including Htun Oo and others in Pegu, and Phyo Wai Aung, whose trial is continuing in Rangoon.

Since the method of national reconciliation through hostage taking requires the existence of a pool of hostages that can be drawn upon if and when the authorities see fit, while releasing detainees through one door, the authorities continue to pull in others through another, as in the following cases on which the AHRC issued Urgent Appeals during the year:

1. In August the AHRC issued an Urgent Appeal on the case of Htun Oo and 13 other persons, 11 who have been taken custody, accused in connection with a bombing in Pegu during 2010. The police brought charges against the accused following illegal detention of over three months and on falsified records. According to the charges, some of the accused had gone to Thailand to get training in political defiance and use of Internet and got financial support with which they made the bomb attack. However, study of the records reveals that they are fabricated, that the evidence against them is immaterial, and that criminal procedure has throughout the case been flagrantly violated.



Notwithstanding, at time of writing the trial against them was proceeding, with an expectation of guilt and lengthy prison terms being handed down.

2. In February, a court sentenced 22-year-old Kaung Myat Hlaing to 10 years in jail for allegedly sending some politically oriented photographs through the Internet. Aside from the trivial nature of the offence and the fact that the police had no evidence against him, he was tried and convicted twice for the same offence, which is contrary to the law in Burma. He also was held illegally for nine days, in which time he was not fed and was allegedly tortured to obtain a confession, after initially also being accused of involvement in a bombing.

In view of such ongoing and recently completed cases, the official admission in 2011 that “prisoners of conscience” exist in Burma is not of itself some kind of breakthrough, but merely a belated statement of fact, which of itself does not amount to anything much. Indeed, after the release of the over 6000 detainees in October, government sources indicated through the media that only about 300 more of these prisoners are still behind bars. Why the authorities would acknowledge but not release these political detainees is perplexing, but all the more perplexing is why the figure is only 300, when groups like the Thailand-based Assistance Association for Political Prisoners (Burma) put the number at close to 2000. Presumably, those included as “prisoners as conscience” are those who have been prosecuted for offences related to political activities, such as Internet-use crimes under the draconian Electronic Transactions Law, rather than those like U Myint Aye, who was imprisoned after being tortured and forced to confess to plotting and causing bomb blasts in the country, or the 14 people in Pegu.

Reports of ill treatment of detainees continued throughout the year, and the AHRC made a number of interventions on these, although appeals issued constituted only a fraction of the reported incidents.

In February the AHRC reported on a case in which six men in 2010 were accused of having contact with an insurgent group in the east of Burma. Soldiers and police arrested five of the six villagers, the other one getting away. Soldiers tortured the men to extract confessions. The methods of torture allegedly included setting fire to plastic and dropping it onto the men’s bodies, including the genitals. Of the five men detained, one paid money in order to be released, while another, 38-year-old San Shwe, died due to torture in custody. According to a witness, officials dragged his body “like a pig” to a treed area and buried it in an attempt to cover up the murder. The remaining three men have been imprisoned for three years each. None of the accused men had a lawyer when they were convicted in the township court and they were not able to defend themselves or cross-examine the police and local council officials who deposed against them. None of the army personnel involved in the case appeared in court. There was no material evidence to link any of the accused to the crimes that they allegedly committed. Nor were there any independent witnesses. The family of San Shwe lodged a missing person case but the police failed to investigate, even though he was named as among the persons suspected of contact with insurgents in the cases against the three convicted men. They

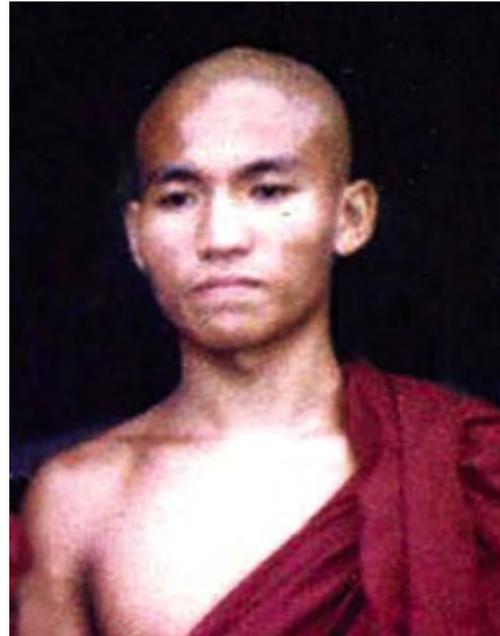


have tried to take a case to court but have so far been unsuccessful at getting an investigation opened.

Of special concern was the case of U Gambira, a monk who was at the forefront of the 2007 protest movement, and who is reportedly suffering from serious illness. In October, the AHRC director, Wong Kai Shing, wrote personally to the president of Burma, U Thein Sein, a former general and prime minister of the previous government, calling for urgent humanitarian intervention on behalf of the monk:

“The Asian Human Rights Commission has been concerned about Shin Gambira’s health since we received information that he had been assaulted during a prison transfer and that he had been assaulted repeatedly at the Khandi Prison over the course of about a month, due to which he has been suffering from head and back injuries.

According to prisoners released from Kalay Prison on October 12, due to these injuries, Shin Gambira is suffering from fits, in which he frequently cries out in pain and clutches at his head. The prison authorities then have to hold him down to administer a drug via injection, perhaps a sedative, after which he goes quiet and falls unconscious. When he comes out of unconsciousness, he slurs his speech.



*Shin Gambira*

From these reports, we conclude that both the physical and mental health of this detainee is in a very precarious situation indeed. While maintaining the position that Shin Gambira ought to be released from prison without delay, as he has in our opinion committed no offences for which he deserves to be imprisoned, I urge you, regardless of other factors, to look into the case and arrange for his prompt transfer back to a facility in Yangon [Rangoon] where he can receive appropriate treatment and also be close to his family.

The question of detainees’ health is, as you know, a humanitarian matter that transcends political issues. We trust that you will consider this case in that spirit and look forward to your prompt intervention. We also take this opportunity to again urge that the International Committee of the Red Cross be given unimpeded access to all places of detention in Myanmar in accordance with its international mandate.” [AHRC-OLT-013-2011, 25 October 2011]

After this letter was issued, family members who visited U Gambira confirmed in radio broadcasts that his situation is very grave and they fear for his life and sanity; however, prison officials denied that anything is wrong with him. At time of writing, the AHRC is not aware of any action being taken by the president or other senior officials to intervene in his case; at least to have him transferred back to Rangoon, where his family can be in



regular contact. Indeed, it is a feature of the handling of political detainees in Burma that they are transferred to remote prisons for precisely this reason that they suffer an extrajudicial punishment in the form of isolation from family and friends, who not only provide moral support but also provide much needed food, medicines and other items with which a detainee can survive.

This “gulag archipelago” policy was the cause of death of another human rights defender monk held in custody, on whose case the AHRC reported in December 2010. U Nemaında, who had been sentenced to 20 years in prison in 1999 for alleged involvement in an unlawful association, had been suffering from a curable skin disease for over a month, in the Moulmein prison on December 8. He had complained to the prison authorities about his disease but no medical care was provided. As he was sent to a prison far away from his home, none of his family members could visit him to assist. The “gulag archipelago” policy is yet another from earlier periods that has remained under the current government, despite its pretensions to represent a change from the past, and yet another that must be abandoned before the government of Burma can expect to be taken seriously in its claims.

Widespread accusations also persist of maltreatment during police interrogation. A senior legal expert alleged in a signed open letter that police drugged his client during interrogation. According to Aung Thein his client U Zeya has told him that during 20 days he was interrogated, he experienced a lack of hunger, heightened energy and lessened drowsiness, as well as a loss of concern to deny the allegations that the police put to him, replaced by a willingness to agree with everything they suggested. He also said that during the 20 days he went to urinate only three or four times. Zeya, 58, is another person convicted for political reasons of a concocted bomb plot, following the arrest of his son for taking photographs at the site of a bomb blast in April 2010. U Aung Thein alleges that his client was given some kind of amphetamine in drinking water supplied while in custody. Aung Thein noted that this is not the first case in which a client had made such an allegation to him. The AHRC also has received details of such cases, including one in which an accused said that he was injected with an unknown substance.

All these allegations that relate to abuses of human rights committed while under custody again present an opportunity for all concerned agencies and individuals to press for the International Committee of the Red Cross to be allowed to resume its visits to places of detention in Burma. The denial of access to the ICRC is related to the alleged drugging of accused persons, since both relate to an official mentality that nobody has a right to know what really goes on behind the closed doors of police stations and prisons. Where even the principle of an outside agency confidentially monitoring detainees’ conditions in accordance with a globally established mandate is unacceptable, there is no chance of anyone keeping tabs on what officials do to people in their custody. Acceptance of external monitoring of basic conditions is a prerequisite for allegations like these to be addressed in any meaningful way.



### *Conclusion*

Under semi-enlightened despotism, intellectuals flattered at the opportunity to have some input into the affairs of state are recruited to an essentially authoritarian cause and encouraged to conjure up an image of progress that does not actually exist, or of progress that is not of the sort that they describe or to which some of them may in fact aspire. In the current period in Burma, it can also be described as market-oriented despotism, in which conditions will enable military-linked private enterprises to do as they please in the country, while the institutions needed to monitor and restrain their activities will not exist. The latter type of political shift will not give meaning to the values of the global human rights movement, but it will result in changes to the dynamics of human rights abuse in Burma, and perhaps lead to a worsening of overall conditions compared to those which existed under successive military regimes.

Ultimately, the expression, enjoyment and defence of human rights are about participation: not the type of fraudulent, managed participation imagined by military types and technocratic administrators, but the opportunity for genuine participation of the sort that the people of Burma have attempted repeatedly to obtain for themselves, most recently in the nationwide protests of 2007. No such opportunity exists at the present time, and so nor has there been any sign of public participation in the political rejigging of the army-run system during 2011. The reason for this lack of participation is that people are, after all, not stupid, as the military and commercial elite in Burma has repeatedly made the mistake of thinking. A few soldiers pulling off their trousers and putting on sarongs fools nobody. Indeed, it did not fool anybody last time it was done, in 1974, when a new “civilian” government rather than being greeted with applause or praise was greeted with widespread strikes and public protests. This time around, the presence of Aung San Suu Kyi and some other trusted national figures has allowed the new government to negotiate the political waters a little better, but it has not yet brought public participation, and people’s tolerance will only last so long.