Myo Myint Nyein and the 21 Prisoners’ Case

“there is essentially no freedom of thought opinion, expression or association in Myanmar. The absolute power of SLORC is exercised to silence opposition and penalise those holding dissenting views or beliefs ...” Judge Rajsoomer Lallah, United Nations Special Rapporteur of the Commission on Human Rights, October 1996.

Introduction

In 1996 Myint Nyein and 21 other political prisoners, incarcerated in Insein Prison, were tried for their alleged attempts to maintain contacts with the outside world. The political prisoners were tried under the 1950 Emergency Provision Act and sentenced to a further seven years incarceration.

This is a true story of innocent persons who are now languishing under atrocious conditions in Insein prison and who are counting their days to freedom. An examination of this case will serve to expose the true nature of the numerous politically-motivated criminal cases taking place inside Burma.

Why is the case a significant one?

The significance of the case, importantly, is that it exposes clearly to the international community the true nature of the relentless political oppression being perpetrated by the SLORC/SPDC, their contempt for the rule of law and due legal process, and their utter disdain of world opinion about political and individual human rights. The second significance lies in the fact that among the prisoners are prominent members and supporters of the National League for Democracy which won a landslide victory.
in the 1990 democratic elections but were prevented from taking the reins of government by SLORC/SPDC, the military junta which continues to hold on to power illegitimately.

The political prisoners attempted to send information about the desperate situation in Insein prison to General Secretary of the United Nations. According to judgement of the Rangoon Divisional Court, that act provided a compelling mason to impose a long prison sentence.

This case should prod the United Nations and the international community to consider how political prisoners inside Burma in such needy circumstances can be protected.

The case was tried in Insein prison the judgement, dated March 28, 1996, was signed by Kyaw Htun, Deputy Divisional Judge of the Rangoon District Court (Northern District Court). That document details the evidence and testimonies presented at the trial and the judge’s reasons for finding all 22 prisoners guilty.

According to the accepted procedures, as stated in the Evidence Act and the Court Manual, the judgement of the court is a public document and people concerned in the case should have the right to access that judgement. SLORC/SPDC’s obstruction, however, has acted to make it extremely difficult for ordinary folk to get any concrete information about cases tried in Insein prison. In spite of SLORC/SPDC’s interference, information, about this trial was secretly smuggled out of the prison by supporters of the All Burma Students Democratic Front (ABSDF) who published the details in a paper, “Pleading not guilty in Insein”.

This is the first time since 1988 that detailed information about the unjust trials in Insein prison have been exposed before the international community. That exposure is based directly on primary evidence - the original judgement of SLORC/SPDC’s on court.

While the 1996 case was being tried, one of the prisoners, U Hla Than, passed away in the prison. U Hla Than, a lawyer, won the seat of Coco Islands for National League for Democracy led by Daw Aung San Sun Kyi in the 1990 May elections. He was arrested by the military junta for attempting to form a provisional government and was sentenced to 25 years imprisonment.

Without adequate medical attention, his health deteriorated in Insein weakened his condition. Only when the situation became hopeless did the prison authorities allow him to be sent to Rangoon General Hospital where he died on August 2, 1996.
Another of the prisoners, U Win Tin, is a prominent journalist in Burma and is secretary of the Central Executive Committee of the National League for Democracy.

What was the charge?

The prisoners were charged on March 20 1996 under Section 5 (E) of the 1950 Emergency Provision Act which states, “… if a person aims to disseminate false information and has committed such an act or is in the process of doing so, knowing the news is not correct or there is enough proof that the news is not correct…”

The alleged punishable action was that the accused prisoners engaged in writing and distributing seditious literature and drawing cartoons and illustrations aimed at discrediting the State. Despite knowledge and proof that information contained in these documents was false.

Allegations based on the Information of police Lieutenant U Khin Htay:

First Allegation:

That in 1996 Myo Myint Nyein and accomplices secretly wrote the “New Blood Wave Magazine” which contained news items critical of the State, in commemoration of the founding of Rangoon University, and that they distributed the document in Insein prison.

Second Allegation:

That the prisoners wrote a paper entitled “The Presentation of the Prisoners of Conscience Unjustly Detained in Insein Prison and Request and Demand on Human Rights and Politics in Burma” addressed to the Secretary-General of the United Nations.

Third Allegation:

That the prisoners brought radios secretly into the prison, and acted to re-disseminate information despite knowledge that it was false. That they compiled news records and distributed them.

To support the allegations of the plaintiff, the following statements were made by the plaintiffs’ witnesses upon Myo Myint Nyein.

(a) Myo Myint Nyein smuggled Time and Newsweek magazines into the prison by unlawful means and distributed them for other prisoners to
(b) Myo Myint Nyein took responsibility for the layout of the magazine which contained seditious literature against the State, and which was written in commemoration of the Diamond Jubilee of the founding of Rangoon University.

(c) Nyunt Zaw, Kyi Pe Kyaw, Zaw Min, Phyo Mm Thei and Myo Myint Nyein discussed collecting information on events within the prison and presenting this information along with their demands, to the Secretary-General of the United Nations.

(d) Myo Myint Nyein held discussions with Phyo Min Them and Kyaw Min Yu (aka) Jimmy about a conference to be held in Vienna, Austria [UN Human Rights Conference] As a result, Phyo Min Thein wrote a paper in English on a short-sleeved prison shirt and smuggled it out of the prison.

(e) Myo Myint Nyein wrote “New Year Greetings for Aung San Suu Kyi from her Colleagues” on a white cloth and asked 107 prisoners to sign their names on it.

(f) Myo Myint Nyein collected news from visitors during prison visits and distributed this information in a news bulletin every Sunday.

(g) U Hla Than received from Myo Myint Nyein the pieces of thin Ajinomoto plastic bag on which U Win Tin had written a letter to the United Nations. U Hla Than concealed this letter in the handle of the plastic basket he had made.

Legal discussion

(1) Section 340 (1) of the Code of Criminal Procedure, in force inside Burma, provides as follows: “Any person accused of an offence before a criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.”

Article 455(1) of the Court Manual states: “Every person charged with an offence shall have the right to be defended by a pleader”

It is clear that in this case, however, the prisoners lost their access to legal defence guaranteed as a right by the Code and the Manual.

(2) The Court relied heavily in its judgement on the statement provided
by the police lieutenant U Khin Htay. According to Article 162 of the Code of Criminal Procedure, however, the statement of the police alone cannot be considered by the court as evidence to convict the accused.

Article 62 states: “No statement made by any person to a police officer in the course of an investigation under this chapter shall, if reduced into writing, be signed by the person making it, nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used as evidence (save as hereinafter) provided at any inquiry or trial in respect of any offence under investigation at the time when statement was made

U Khin Htay, the plaintiff in the case, was a police officer. The High Court of Burma has determined that the statement of a police officer cannot be admitted as evidence (U Seen Htun vs. The Union of Burma, 1980 Ruling of Burma (7); Mating Soe Myint vs. The Union of Burma, 1981 Ruling of Burma (28))

(3) The other statements which the court referred to in their judgement were those made by prison officers. They could only testify how and where they made a search of the prison cells, which materials were confiscated, and from whom. They were unable to testify that how the prisoners committed a crime.

With regard to a legal search, the section 103 (1) of the Code of Criminal Procedure includes the following provisions:

i. Before making a search under this chapter, the officer or other persons [are] to attend and witness the search and may issue an order in writing to any inhabitant of the locality in which the place to be searched is situated so to do.

ii. The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses, but no person witnessing a search under this section shall be required to attend the court as a witness of the search unless specially summoned by it.

iii. The occupiers of the place searched, or some person on his behalf, shall be permitted to attend during the search, and, if present, shall be required to sign the list prepared under sub-section (2) in taken of the correctness thereof, and a copy of the said list shall be delivered to such occupier or person by the officer or other person making the search.
iv. When any person is searched under section 102, sub-section (3), a list of all thing taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

v. Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the penal code.

The prison officers’ searches were, in this case, therefore, illegal because:

a. There was no attending witness while the searches were made.

b. The occupiers of the place searched were not permitted to attend during the search: the search was made only after the prisoners were taken outside their cells.

Moreover, the court accepted, considered and admitted the statements of the prison officers as evidence. This action was wrong in law. 11941 Rangoon Ruling (552):

(4) Time and Newsweek magazines are hardly illegal documents. They are freely available for everybody to purchase and enjoy reading outside the prison. Taking the magazines into the prison is not a criminal offence. According to accepted international practice as well as that specified in the Jail Manual, still in-force inside Burma, it is the right of the prisoners to enjoy such privileges. The action of taking such magazines into the prison, does not violate the provision of Section 5(E) of the Emergency Provision Act.

(5) Myo Myint Nyein stated that he wrote a paper on the rights and grievances of the prisoners to be presented to the United Nations through the International Committee of the Red Cross (ICRC) during their proposed visit to the prison. Because the SLORC/SPDC rejected the request of the ICRC to visit Insein prison, Mw Myint Nyein’s intended action was frustrated. Consequently, along with other prisoners, he determined to attempt to present information directly to the United Nations.

It could be argued that had the SLORC/SPDC permitted representatives of the United Nations or the ICRC to visit the prison and to interview the prisoners, the desperate action of seeking secretly to take the papers outside the prison would not have been necessary. Although such an action by Myo Myint Nyein and other prisoners may have violated the discipline imposed in the prison, it could hardly on that basis have warranted
such a severe and unmeasured punishment from the authorities.

The criminal law contains various rules which are meant to guide those determining whether any given conduct by a person is, or is not, a crime. The most fundamental of these rules is the general principle that a crime is constituted by:

(a) certain conduct by an accused person
(b) which causes a proscribed effect (such as death); and
(c) which is done with a guilty mind - with intention, recklessness or negligence. This principle is derived from the ancient maxim actus non facit reum nisi mens sit rea.

(6) The crime alleged against the prisoners is that of “Writing and distributing seditious literature and drawing cartoons and illustrations aimed at discrediting the State despite knowledge and proof that information contained in these documents was false”.

Section 101 of the Evidence Act provides as follows: “Whoever desires any Court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist…”

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. Accordingly, the burden of proof that the information contained in these documents was false, lies with the plaintiff.

The documents submitted by the plaintiff as evidence were:

1. A magazine in commemoration of the Diamond Jubilee of the founding of Rangoon University,
2. The testimonials of Prisoners of Conscience From Lnsein Prison Who Have Been Unjustly Imprisoned; Demands And Requests Regarding Human Rights Violations In Burma,
3. New Year Greetings for Daw Aung San Suu Kyi from her colleagues,
5. A paper to present to Professor Yozo Yokota, former UN Special Rapporteur on Burma,

The plaintiff was bound to prove that, with reference to the specific paragraphs or sentences, the information contained in the foregoing documents was false. In the judgement the court was entirely unable to identify the false information. Myo Nyint Nyein and the other prisoners in
this case testified that they wrote the documents mentioned above except the last one, “The New Blood Wave Magazine”.

The information contained in those documents before the court was unchallenged and was true. That is why, with the charge of the violating section 5 (E) of the 1950 Emergency Provision Act, the court could not properly move to punish the prisoners.

(7) In page No (7) of the original judgement, it was stated that a New Blood Wave Magazine” was found between the lake and the barrack of the jail staff. However, anybody, including the prison authorities, could have left any material there. It was altogether obvious from the evidence, that the “New Blood Wave Magazine” was not found in the possession of the prisoners.

Myo Myint Nyein testified that he saw the magazine only in the court and he had never seen it before. Win Thein also made a statement that it was known that the chief prison officer, U San Ya, found the “New Blood Wave Magazine”: that it was not taken from his possession and he was not involved with the magazine. No evidence to connect him with the publication was found in his room.

Aung Myo Tint also attested that, after being tortured, a book was shown to him and he was asked whether he wrote it or not. He denied it. Htay Win Aung also denied that hand writing in the magazine was his writing. Kyaw Min Yu also stated that he saw the magazine only in this court. U Win Tin also denied that he wrote anything in the magazine. Law Myint Maung testified that he had never heard about the existence of the New Blood Wave Magazine and had not seen it before he caught sight of it in the court, although in the magazine his name was mentioned as the author of some of the poems and articles.

In reality, the magazine was written by the investigators.

(8) The action which the prison authorities took against the prisoners was untenable. The actions of the prisoners were not crimes against either the 1950 Emergency Provision Act or any other criminal law.

If the prison authorities asserted that the prisoners offended against prison regulations, they should have acted under the provisions of the “Jail Manual”, a direction still in force for the administration of prisons in Burma. It appears, however, that SLGRC/SPDC is not keen to advertise the existence to prisoners of the provisions contained in the Manual which are more liberal than the SLORC/SPDC’s practices. The international community should exert more pressure on the SLORC/SPDC...
now that it is clear that the SLORC/SPDC is knowingly suppressing implementation of the regulations contained in the “Jail Manual” and substituting oppression of political prisoners by harsh and illegal practices which deny basic human rights in the prison.


Section 39 provided as follows: “Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits ... Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorised or controlled by the administration.”

Despite those internationally-recognised provisions, the 22 innocent political prisoners remain incarcerated in Insein prison in Burma, convicted of the “crime” of attempting to contact the outside world, and are being detained by the SIORC/SPDC authorities.

Conclusion

The Myo Myint Nyein cast is a telling example for the international community to help people to understand the extent of the deprivation of human rights among the ordinary citizens of Burma.

Article (10) of The Universal Declaration of Human Rights provides: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in The determination of his rights and obligations and of any criminal charge against him...”

On the contrary, in Burma judges are appointed by the illegitimate SLORC/SPDC junta. The judges are not independent and not subject only to the law. They have to observe also the wishes of the SLORC/SPDC generals.

In cases of a political nature, there are no public hearings. Myo Myint Nyein’s case was tried, devoid of public scrutiny, inside the walls of Insein prison.

All the prosecution witnesses were SLORC/SPDC officials. Documen-
tary evidence against the prisoners was fabricated. The assistance of the legal council for the defence was denied. Some prisoners were tortured and forced to give the false statements.

In this illegal context, Myo Myint Nyein and 21 prisoners were sentenced to seven years imprisonment. Seven years imprisonment is a long term for an innocent person to remain within brick walls. During that time, for a student, the opportunity for education will evaporate; for a business man, customers will be lost and business will collapse; for those previously in government service dismissal from employment follows; and, a person who suffers illness may die in prison. That was the fate of U Hla Than an experienced advocate and elected MP who was left to die while the case was being tried in the prison. Even the strongest and most committed person might buckle under the oppressive and hopeless conditions.

In a similar way to those involved in the Myo Myint Nyein case, everyday suspected people are being taken before the SLORC/SPDC’s unjust, biased and hopeless tribunals. Throughout the whole county of Burma, thousands have been sentenced to long-term imprisonment for actions which, in a free democracy, do not constitute a criminal offence. Many have been tortured and many have died in the SLORC/SPDC’s cells. These yet-to-be-told crimes by the SLORC/SPDC underline tragically that, inside Burma, there is no “rule of law”.

The SLORC/SPDC junta and their usurping regime place themselves above the law, for the will of the SLORC/SPDC generals has now become “law” in Burma. Judicial systems in Burma do not act for the protection of the rights of the people, but for the retention of SLORC/SPDC’s power to rule.

Until the seven years sentence is up, Myo Myint Nyein and others will be counting their days for freedom, daily facing hardships, and suffering atrocities in the notorious Insein prison. This situation should convince the international community that, without the ‘Rule of Law’ in Burma, human rights violations will continue unabated inside that country.