£MYANMAR (BURMA)
@Unfair political trials

Introduction

Amnesty International has previously expressed concern that trials of political prisoners by Myanmar (Burma) [1] military tribunals are not conducted according to international standards for fairness.[2] In particular, the organization has emphasized that the summary trial procedures used by military tribunals restrict the defendant's rights of defence and to appeal, and that the resulting unfair trials have been used to imprison prisoners of conscience[3] and other political prisoners.

In June and July 1991, Amnesty International interviewed a number of former political prisoners who had been tried in Myanmar and lawyers and others who had knowledge of political trials that have taken place since the armed forces assumed power with the establishment of the State Law and Order Restoration Council (SLORC) in September 1988. The interviews were conducted along the border between Thailand and Myanmar with people who had left their homes in Myanmar, particularly during 1990 or 1991. Their testimonies corroborated Amnesty International's concerns about unfair trials of political prisoners in military tribunals. They also contained evidence that trials of political prisoners in civilian courts are in many instances unfair. This document contains information mainly about such trials.

According to the testimonies, under current political conditions in Myanmar, neither military tribunals nor civilian courts guarantee a fair trial to someone accused of a political offence. Amnesty International's sources say that although the procedures used in civilian courts may appear to conform to international standards for fairness, the civilian judiciary is vulnerable to intimidation and other pressures sufficient to undermine its independence from the army. Furthermore, the restrictions placed on political prisoners' access to legal counsel are typically such as to deny them any real opportunity to prepare a proper defence, whether they are tried in military tribunals or civilian courts.

Amnesty International has not been granted permission to visit Myanmar[4], and under the current circumstances the organization is not in a position to cross-check or otherwise

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[1] *Myanmar is the name officially given to the country previously known as Burma. The name change was proclaimed by the ruling State Law and Order Restoration Council (SLORC) after it seized power in 1988.*

[2] *See, for example,* Myanmar: `In the National Interest', Prisoners of conscience, torture, summary trials under martial law *(AI Index 16/10/90).*

[3] *These are people detained for their beliefs, colour, sex, ethnic origin, language or religion who have not used or advocated violence.*

[4] *The organization's most recent request, made in October 1990, has received no response.*

confirm all the information contained in the testimonies it has gathered about trials of political prisoners in Myanmar. However, on the basis of the information available to it, Amnesty International believes allegations of unfairness are credible enough to warrant serious concern.

Those who gave testimonies to Amnesty International consistently expressed fear that members of their own families still living in Myanmar, political prisoners still held in the SLORC's jails and lawyers and members of the judiciary still practising in the country could be put at risk of ill-treatment or harassment by the authorities if their identities were revealed. In the material that follows Amnesty International has therefore often withheld details that would readily identify such people.

Amnesty International's concerns about procedures in military tribunals

The SLORC's Martial Law Orders 1/89 and 2/89 bestowed judicial authority on military commanders in July 1989. People who opposed martial law authority by "violation or defiance of orders issued by the SLORC, the government or [military] commanders" were to be tried by military tribunal. Order No 2/89 also established special summary procedures to be observed in the summary trials of martial law offenders. Military tribunals were given the authority to "waive unnecessary witnesses", "indict an offender without hearing prosecution witnesses" and "reject the recalling of witnesses who have already testified". Order No 2/89 added that "the decisions and judgements passed by a military tribunal shall be final." There is thus no right of judicial appeal. These provisions contravene internationally-recognized fair trial standards, such as those contained in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Article 14 states that people tried on criminal charges should be guaranteed the opportunity "to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him"; and that "everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal."

Official news media accounts of trials of political prisoners by military tribunals have indicated that trials are often completed in a single half-day hearing held inside the walls of the prison where the accused is held. According to the testimonies gathered by Amnesty International in June and July 1991, political prisoners tried in military tribunals have often been held incommunicado, without access to family members or legal counsel up to the time of such summary hearings. Family members and legal counsel are routinely not allowed into the court even during these hearings, which are furthermore held *in camera*. The accused is thus denied the opportunity to prepare any defence and to exercise the right of defence in court. These procedures are contrary to the international fair trial standards set forth in Article 14 of the ICCPR. According to it, the accused must be guaranteed "adequate time and facilities for preparation of his defence and to communicate with counsel

of his own choosing"; and the opportunity to "be tried in his presence" and "defend himself ... through legal assistance of his own choosing". Article 14 also states that trials should normally be held in public.

Political prisoners tried in military tribunals may never have any opportunity to meet a lawyer in order to prepare a defence, either in jail or in a courtroom. A lawyer who tried to represent two prisoners of conscience arrested in an upper Myanmar[5] division in 1990 for accusing the military of human rights violations said he was "only able to follow their case for one day" because after one day it was put into a military tribunal. He said he "was never able to meet them" while they were awaiting and undergoing trial, even though he "went to the jail repeatedly" and also tried to get into the military tribunal courtroom on the day of the single hearing at which they were sentenced.

The testimonies collected by Amnesty International suggest that trials by military tribunals are the most expedient mechanism for imprisoning prisoners of conscience and other political prisoners because they can be conducted very quickly and sentencing is carried out immediately. The testimonies further indicate that the SLORC prefers trials by military tribunal to civilian court trials because they allow the prisoner even fewer opportunities to meet legal counsel, relatives, or others, or no such opportunity at all. Trial by military tribunal appears to help the SLORC prevent political prisoners from having the opportunity to prepare an adequate defence, and from revealing to outsiders any untoward aspect of their treatment during interrogation or conditions of detention, or such information about other political prisoners.[6] In short, trial by military tribunal helps to keep prisoners incommunicado, while trial in a civilian court offers limited, but occasionally significant, opportunities for political prisoners to have contact with the outside world.

Former political prisoners tried in Myanmar, lawyers and others with knowledge of trials of political prisoners consistently told Amnesty International that conviction of a political prisoner brought before a military tribunal was virtually a foregone conclusion. None knew of cases in which a political prisoner tried before a military tribunal had been acquitted. All official media reports of trials by military tribunals mention only convictions.

Detention without trial

[5] *The term Upper Myanmar (or Upper Burma) originates in the period of British colonial rule and refers roughly to the northern half of the country.*

[6] *Amnesty International has previously presented evidence of the widespread use of torture against political prisoners in Myanmar. See, for example, Myanmar: `In the National Interest', Prisoners of Conscience, torture and summary trial under martial law (AI Index ASA 16/10/90), published November 1990.*

Amnesty International's interviews indicate that if the prisoner is one in whose case there is little public interest, the SLORC may allow him to be tried in a township court[7], to which the public occasionally is able to gain some access. If there is a somewhat higher degree of public interest, the military may have the case tried in a civilian court operating inside a restricted area, such as a prison. If there is likely to be strong public interest, then the SLORC may have the prisoner tried in a military tribunal to which even family members and lawyers have no access.

In those cases where public interest is particularly intense, the military may simply dispense entirely with a trial. This method was used against the two Myanmar prisoners of conscience best known in the country and internationally: Daw Aung San Suu Kyi, the General Secretary of the National League for Democracy, and former prime minister U Nu, patron of the League for Democracy and Peace. Instead of putting them on trial, the SLORC applied the 1975 State Protection Law against them to place them under administrative restriction orders in July and December 1989, respectively.[8] If the SLORC considers it to have been a mistake to allow a case to go to trial, then it may reportedly intervene to stop the proceedings, even if it is a trial by a military tribunal. According to information gathered by Amnesty International in June and July 1991, this happened in the case of U Kaweinda, a well-known and politically popular Buddhist monk from a monastery in Mandalay who was arrested in July 1989[9], and later adopted by Amnesty International as a prisoner of conscience. His trial by military tribunal was reportedly suspended while in its first session and apparently never resumed because members of the public gathered near the court and word leaked out that U Kaweinda had vociferously denied allegations that he was a member of the insurgent Communist Party of Burma underground.[10] In his case, it is

[7] *Myanmar is divided into states and divisions, which are comparable to provinces in other countries. States and divisions are divided into townships, which are comparable to districts in other countries. Most cases against political prisoners tried in civilian courts appear to begin in township courts.*

[8] *For a description of the cases of Aung San Suu Kyi and U Nu, see Myanmar: Prisoners of Conscience and Torture (AI Index ASA 16/04/90), published in May 1990.*

[9] *For more about U Kaweinda's case, see Myanmar: Amnesty International Briefing (AI Index ASA 16/09/90), published November 1990.*

[10] *The national leadership of the Communist Party of Burma disintegrated in 1989 as a result of internal conflicts, and most of the organization's troops discontinued their decades-old armed opposition to the central authorities. Some Communist Party cadre are believed to remain loyal to an ideology of revolutionary violence and to be trying to maintain a clandestine structure which they hope will someday take power and establish a dictatorship of the proletariat. However, they are also believed to support and promote popular demands for parliamentary democracy because they expect this will lead to a breakdown in the SLORC's monopoly on political power and greater opportunities for Communist Party political activities. At the same time, the SLORC often accuses pro-democracy activists of being agents or dupes of the Communist Party, and Amnesty International believes the SLORC has made use of administrative detention or unfair trials to deny those so accused any opportunity to challenge any specific allegations that they may have committed recognizably criminal offenses in connection with Communist Party activities.*

unclear what legal basis, if any, there was for his continued detention. There are conflicting reports about whether he remains detained without charge or trial or died in detention as result of ill-treatment inflicted while in detention.

Civilian courts: formalities and realities

Upon assuming power on 18 September 1988, the SLORC abolished all existing civilian judicial institutions. However, on 26 September 1988, it promulgated a Judicial Law defining the principles on which judicial proceedings should be based and re-establishing civilian courts at various levels. Reflecting international standards, the law proclaimed that "judicial proceedings shall be independent" and "shall permit the right to argue one's case". In a letter addressed on 6 February 1991 to Amnesty International[11], the Myanmar authorities noted that even under the provisions of Martial Law Orders Numbers 1/89 and 2/89, the civilian courts established by the Judicial Law "continued to function and are dispensing justice for various offenses normally in accordance with the existing law". The letter also said that only "special cases are sent up for trial by military tribunals", and this was done "only after thorough consultation with the judges from the civil courts and law officers".

Amnesty International's information indicates that the reality of trials of political prisoners in civilian courts is at variance with the declarations of the Judicial Law and the authorities' assurances quoted above. This may be due in part to intimidation by the military authorities of the professional judiciary. Amnesty International's information suggests that proceedings in civilian courts are not always independent of the political influence exercised by the military through the SLORC administration, that defendants on trial for political offenses in civilian courts experience severe difficulties in consulting legal counsel, and that military authorities decide arbitrarily on whether a case will be tried in a civilian court or a military tribunal, apparently choosing the venue that will best ensure the desired results.

Some of those interviewed said they believed that the possibility of acquittal existed for a political prisoner brought before a civilian court, if the military was willing to allow this to happen. Indeed, one former political prisoner interviewed by Amnesty International who was tried in a civilian township court in a lower Myanmar[12] ethnic minority state[13] in 1990

[11] *By the Permanent Mission of the Union of Myanmar to the United Nations Office and other International Organizations, Geneva.*

[12] *The term Lower Myanmar (or Lower Burma) originates in the period of British colonial rule and refers roughly to the southern half of the country.*

[13] *The divisions of Myanmar referred to as "states" contain higher proportions of ethnic minorities than those referred to as "divisions".*

explained that he was found not guilty after it was shown in court that he was the victim of mistaken identity. He had been arrested because he had the same name as a political suspect being sought by military intelligence, and when the error became apparent, he was released.

Possibilities for preparing a defence

Entering a civilian courtroom may give a political prisoner a momentary chance to contact the outside world, but it hardly provides ample time and other facilities for him to consult with legal counsel on preparation of a defence. In this regard, the situation for political prisoners being tried in civilian courts is substantively little different from that faced by political prisoners tried before military tribunals. This is illustrated by the testimony of a former political prisoner arrested in Yangon[14], the capital, in the latter part of 1990 for involvement in attempts to commemorate the deaths of people allegedly killed by the military in 1988. He explained that he was initially held incommunicado for interrogation by military intelligence, and only when he was brought before a township civilian court did he have his first opportunity to meet a lawyer. He was then transferred directly to Insein prison, where he was again held incommunicado except when he briefly saw his lawyer during fortnightly civilian court hearings.

Military interference with the civilian judiciary

Amnesty International's interviews indicate that although the civilian judiciary may wish to maintain its independence and properly administer justice, it is under severe pressure to serve the political agenda of the military.

This was indicated by a source familiar with the case of a prisoner of conscience arrested in Ayeyarwady Division in 1989 for peacefully exercising the rights to freedom of expression and assembly by canvassing for a legally-registered political party and raising questions about the military's human rights record. The source said the prisoner was sentenced in a township civilian court even though after his first court hearing "it was clear there was no evidence against him" to substantiate the charge of a criminal offence. He was "nevertheless called to a second hearing at which he was sentenced". The source explained that the judges privately admitted they had been compelled to hand down a sentence "because this was a political matter, and they had to do what the army said." In the case of another prisoner of conscience tried in a township court after he was arrested in 1989 for distributing leaflets criticising the military behaviour towards the population, the judges privately told lawyers who wanted to try to defend him not to bother or take the risks

[14] *Yangon was formerly known as Rangoon.*

involved because "no matter what they did", and no matter what the court itself thought about the merits of the case, "the army would tell the judges what to do".

Sources familiar with the cases of several prisoners of conscience in an upper Myanmar ethnic minority state who were arrested in 1988 for the peaceful exercise of the rights to freedom of expression and assembly by giving speeches critical of the military at public meetings say the civilian judges at the trial were visibly upset at having to sentence the men to prison terms, but did so "because the army told them they had to", and that the army "forced them to sign" the judgement and sentence. In an interview with another source, Amnesty International was told about the cases of several prisoners of conscience imprisoned since 1989 in a lower Myanmar ethnic minority state for peacefully exercising their rights to freedom of expression and assembly by publishing documents presenting a dissident view of the military's treatment of ethnic minorities and by holding rallies to enlist members in a legally-registered ethnic minority political party. The source said their trials in township civilian courts were not fair because the judiciary was unable to act independently, explaining: "The judges didn't really have any chance to do their jobs properly because they were too afraid of the military. They would have liked to do things properly, but they just didn't dare to do so. At the moment, the military controls everything, including the civilian law courts.
Therefore, he said, convictions resulted even in cases where there was "no real evidence" that the law had been broken.

A lawyer from a different lower Myanmar ethnic minority state told Amnesty International he believed that in political cases it was impossible that "anyone would get a fair trial in civilian courts", because the judges have no real choice except to "just take orders from the military". A lawyer from an upper Myanmar division explained to Amnesty International that political detainees who had not broken any law could not be confident of acquittal in township civilian courts "because civilian judges are very restricted in their independence. They have to do what the military tells them". Similarly, a person familiar with the case of a prisoner of conscience arrested in 1989 in a town in a lower Myanmar division for peacefully exercising the right to freedom of expression and assembly by distributing leaflets inviting members of the public to attend a public gathering said the prisoner's trial in a civilian township court was unfair because the judges were "afraid to do anything which the SLORC wouldn't want them to do" and also in this case because the prisoner's lawyer did not attempt a strong defence "for fear of reprisals" by the military.

Transferral of cases from civilian courts to military tribunals: avoiding possible acquittal and political embarrassment

According to the testimonies given to Amnesty International, if in a civilian court trial the evidence that the prisoner has committed any recognizably criminal offence is weak or non-existent, the SLORC may nevertheless seek to obtain a conviction and prison sentence.

It usually exercises one of two options. It may, as indicated above, apply pressure to civilian judges in order to obtain the desired results or, as described in the following case, it may transfer the case to a military tribunal. Thus, one way or another, people arrested on political grounds who have been engaged in legitimate and peaceful activities can be sentenced to prison terms even if the civilian judges believe they in fact have broken no law.

One prisoner of conscience arrested in lower Myanmar in 1990 for peacefully exercising the rights to freedom of expression and assembly by obliquely criticizing military rule at a small public gathering was taken first to a local police lock-up and put on trial before a civilian court. According to a source interviewed by Amnesty International, the arrest was ordered by military intelligence even though the critic had been scrupulously careful not to overstep the restrictions on freedom of expression and assembly imposed by the SLORC. The source quoted one military intelligence officer as having admitted privately that what the detainee had done was "very minor". Two weeks after his arrest, the prisoner appeared before a township civilian court. This was the first time the prisoner had the opportunity to see a lawyer and members of his family. The court agreed to remand the prisoner, and a second hearing was scheduled for a date in the near future. Before that date, however, the prisoner was moved to Insein prison, Myanmar's main prison. This was done without notifying the prisoner's family or his lawyer. At the same time, his trial venue was transferred to a civilian court sitting inside Insein. Again, neither the family nor legal counsel was informed. Only after a hearing in Insein did the prisoner's family and lawyer learn what had happened. There followed a series of hearings before the civilian court sitting inside Insein prison, which the prisoner's lawyer was able to attend, but not the family. The lawyer had no other opportunity to see the prisoner.

After the prosecution had presented their evidence and witnesses, the prisoner's lawyer and family were informed privately by the prosecutors and civilian court judges assigned to the case that the evidence was insufficient to prove that the defendant had broken any law. However, they said they had no choice but to proceed with the case because they were under instructions from the military to do so. They nevertheless indicated that given the weakness of case against the prisoner, he had a chance of being released. At the same time, it was understood that the prosecutors and civilian judge's freedom to decide the case on its merits was limited "because they were afraid of losing their jobs". The family was advised that even if the judges were "sympathetic" to the prisoner and "didn't agree with the system" by which he was being tried, "they had to do what they were doing".

Less than a week after the last civilian court hearing, the prisoner's case was transferred to a military tribunal in Insein prison, with no notification to either his lawyer or family. After the single short hearing by the military tribunal, he was pronounced guilty and given a substantial prison sentence. The prisoner's family learned of the conviction after the fact from relatives of other political prisoners in Insein, and the family informed his lawyer. The police then indicated privately to the family that any further action by the lawyer on the

prisoner's behalf could be counter-productive, and said that they now had to accept "that it was all over".

A lawyer from an upper Myanmar division told Amnesty International about several prisoners of conscience whose cases were transferred from civilian to military jurisdiction. These prisoners were arrested in 1989 for the peaceful exercise of their rights to freedom of expression and assembly by encouraging students to protest human rights violations they believed had been committed by the military. They were first placed on trial in a township civilian court. Although denied access to legal counsel at all other times by the authorities detaining them, they were allowed to have lawyers present during a series of fortnightly hearings. The lawyer interviewed by Amnesty International explained that after a number of hearings it appeared that the trial was not going well for the prosecution because the prosecution was unable to establish that the defendant had actually broken the law. Their case was then suddenly transferred to a military tribunal. The prisoners no longer had access in the courtroom to legal counsel. Their lawyer was told by the township civilian court that he "no longer had a case to defend". He was "not even allowed into the courtroom", and was told that only a lawyer who was also a serving military officer would be allowed to do so. The prisoners were all convicted and given substantial prison sentences.

The lawyer interviewed by Amnesty International in connection with this case explained that he believed it and other trials of political prisoners were moved from civilian courts to military tribunals not only to ensure conviction, but also in order to ensure that convictions were kept "out of the public eye". Another lawyer who was familiar with township civilian courts gave Amnesty International an illustration of why the military authorities prefer not to allow political prisoners out of complete military control. He told of the case of a well-known political prisoner scheduled for trial by a military tribunal who was mistakenly brought to a civilian township court by warders who confused his case number with that of another prisoner. The prisoner took the opportunity of this mistake to shout out accusations about the ill-treatment of other political prisoners.