The State of Human Rights in Burma in 2009

Judiciary as bureaucracy

One of the long-term outcomes of military rule in Burma has been the reduction of a once assertive and independent judiciary into an arm of the bureaucracy. Often persons concerned with politics, human rights and other affairs in Burma take for granted that the judiciary is not independent and leave it at that. Because the problem is not explored, the important consequences of the judiciary as bureaucracy are overlooked: these include the consequences of its non independence and non-separateness from other parts of the state, its endemic corruption, the zero public confidence in the work of the courts, and the lack of public space for debate about issues of justice and the rule of law. This year's annual report on Burma of the Asian Human Rights Commission (AHRC) is organized around these themes.

Non independence

The problem of the non-independence of the judiciary in Burma is a 50-year-old problem. It began with the caretaker government of General Ne Win in 1958, and since 1962 there has been no independent judiciary at all. (For details see *article 2*, vol. 7, no. 3, September 2008.) In the 1960s and 70s the structure and habits of the independent judiciary were completely destroyed. So the problem of a non-independent judiciary in Burma is not just one of a military dictatorship. It is not the sort of problem with which many people are familiar from past experiences of countries in some parts of the world, like the Americas, where judiciaries were variously co-opted and cajoled by military dictators to go along with their agendas, or were marginalized and bypassed if they failed to cooperate. It is a more comprehensive problem of the thorough demolition of the independent judiciary, from top to bottom, over a period of decades, to the extent that the notion of an independent judge upon which international debate is premised no longer exists in Burma at all. Therefore, it is not a problem that will be addressed with some short recommendations for changes in personnel and laws. It is a problem that ultimately will take decades to address, just as it took decades to create.

The problem of non-independence is intimately connected to the non-separation of powers across the whole state apparatus. For the last half-century Burma has been run by decree or, for about 14 years, by a one-party parliament that was anyhow under

executive control. The non-independence of the judiciary is also intimately connected to the non-separation of the executive and legislative functions. Its role has been completely changed from that of a body to interpret and apply statute in individual cases to a body to enforce pronouncements that are described as "laws" but that have never had any legislative backing, nor, for most of the time, any constitutional framework; they are only "laws" insofar as laws can be made without a law-making organ and in the absence of a supreme law to give them coherence.

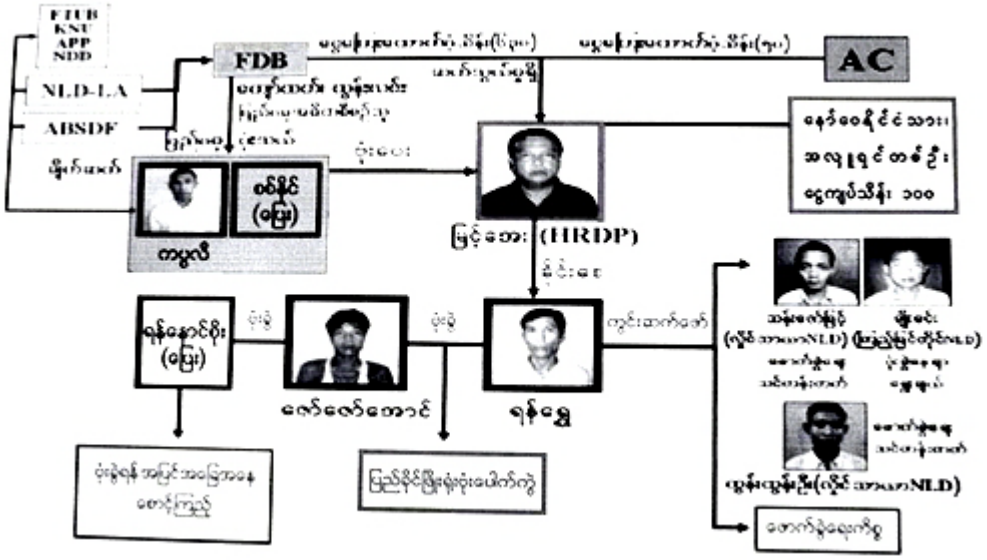
Therefore, the problem of non-independence cannot be properly addressed until the non-separation of powers is properly addressed. The government is keen to give the impression that this will soon be done through the election for new parliaments at the national and regional levels. However, from the contents of the 2008 Constitution—the drafting of which the chief justice oversaw—it is plain that this is not the case. The constitution has declared that the parts of government will be separated only "to the extent possible", which speaks to how far Burma is not only from separation of powers in reality but also even from a basic conceptual understanding of separateness.

The problem of non-independence was brought out most strongly during the year in the case decided against democracy party leader Daw Aung San Suu Kyi and co-accused this August. Although global outrage was expressed at the politically contrived manner in which the proceedings reached their inevitable conclusion, the trial was in many respects typical of thousands of others in recent years, because it was a consequence of the institutionalized non-separateness of parts of government, not so much a particular policy response to a prominent person. The features that it shared with other cases that the AHRC has documented included the following:

a. Inapplicability of charges: Leaving aside questions over whether or not the house arrest of the accused in this case was legal at all, the charges against the defendants were inapplicable, as the order against Aung San Suu Kyi did not include anything to prohibit her from communicating with someone already in her house. Many other cases heard against opponents of the government in Burma also rest on inapplicable and baseless charges. The police, who may receive interrogation files from military personnel and be ordered to frame charges without ever having had contact with an accused, often appear at a loss to identify an offence. For instance, in the case of Aung Aung Oo and three others, the accused were charged with an arms offence but during the preliminary trial process the charge was instead changed to intent to cause public fear or alarm: an offence used when the police can find no other. In the case of Aung Aung Oo and three, the so-called crime was having had stickers calling for the release of Aung San Suu Kyi. The police have no evidence that they had stuck them up

anywhere in public or had committed a crime as alleged, but they were prosecuted nonetheless.

b. Violations of basic criminal procedure: Judges from two districts heard the case against Aung San Suu Kyi and her co-accused. This is a fundamental breach of criminal procedure, which requires that a judge of a jurisdiction hear a case against an accused in the jurisdiction where the alleged offence occurred. There is no provision of law for mixing judges of different jurisdictions. The case also was heard in a closed court which only select persons were allowed to attend: again, there is no basis in law for trying someone in this manner; however, the trying of opponents to the present government in this way is the norm, not the exception. The AHRC is not aware of any such case in recent years that has been conducted in an open courtroom. In fact, in the case of Aung San Suu Kyi and her co-accused there was more openness than in many such cases. Very often family members and also lawyers are denied access to courtrooms. For instance, in the case of human rights defender U Myint Aye and two co-accused, who were sentenced to life imprisonment for an alleged bombing plot, the first defendant was not represented in court despite his attempts to have a lawyer. His original counsel was also charged and imprisoned in a separate case. Myint Aye and his co-accused claimed that they were tortured to extract confessions but the court ignored these claims.



(Government schema with alleged role of U Myint Aye in bombing plot)

c. Problems with witnesses and lack of evidence: The court in the case of Aung San Suu Kyi initially allowed only one defence witness, and thereafter on request to a higher court allowed a second witness. By contrast, the prosecution presented some 17 witnesses, of whom 11 were police and the others were immigration and council officials. Defendants in trials of this sort in Burma are routinely unable to present witnesses. It is also common to find that the only witnesses for the prosecution are police and other officials; and ordinary civilian witnesses, where present, are not genuinely independent but appear for the police as professional witnesses. For instance, in the case against U Tin Min Htut and another, who were accused of writing a letter to the United Nations Secretary General in which they criticized the government and the manner in which the international community has treated the situation in Burma, a line of police testified for the prosecution but the defendants were unable to present witnesses and were not allowed access to a lawyer, even though Tin Min Htut had signed a power of attorney and his advocate had come to the court premises.

Evidence-less cases are also common. As the verdict against Aung San Suu Kyi was being read, nearby a 36-year-old monk named U Sandadhika was arrested and accused of planning to immolate himself as an act of protest against the conviction. Three men in plain clothes and an unmarked vehicle took him to the Yangon North District Police Headquarters, where he was assaulted with a bamboo rod. The police had him forcibly disrobed and charged in court with insulting religion. They later admitted that they had no material evidence to prove the allegation. They also had no independent witnesses and listed only four police officers to appear against him.

When a system can be manipulated and misused to the extent that it is in Burma, it can be used for practically any purpose in practically any case by practically any government official, large or small. Local forestry department staff in Aunglan, Magwe accused human rights defender U Aye Myint of threatening a forest manager in August 2009 after another official, had made a criminal complaint against local villagers, whom he accused of cutting eucalyptus plantations in the Bwegyi Reserve in order to make charcoal. In fact, the officials had allegedly confiscated the "reserve" land from farmer U Nyan Myint and his son, Ko Thura Aung, and had charged them with destroying public property after they had gone to work in the area like before. Although the case against Aye Myint was based on the say-so of some government officials and people whom they had brought to the court as witnesses, Judge Win Myint in the township court sentenced him to prison. In giving his decision, the judge said that the defence witnesses had not been able to show that the accused had not said the things of which he was accused, even though this is a reversal of the presumption of innocence.

Earlier in the year, one of Aye Myint's associates, 43-year-old Ko Zaw Htay, was imprisoned for ten years under the Official Secrets Act because he had video recorded confiscated farmland. Ko Zaw Htay had been detained the previous October and together with three farmers was tortured and illegally detained inside an army compound, before being brought before a judge only in December 2008. He was convicted in an evidence-less case on 23 January 2009.

In 2009 the AHRC also issued an appeal on the case of former elected parliamentarian, U Kyaw Min, a.k.a. Md. Shamsul Anwarul Haque, 58, who together with his wife, son and two daughters was imprisoned for allegedly violating the citizenship law. Kyaw Min and his family were all born in Burma and are lifelong residents. He holds a number of degrees from institutions there and worked as a township education officer and a school headmaster. The election commission scrutinized Kyaw Min's personal records before allowing him to stand for election to ensure that both he and his wife were citizens. Yet in 2005, because Kyaw Min was joining with other elected members of parliament to call for the legislature to be allowed to sit, and also apparently because he met with representatives of the International Labour Organisation, his family was targeted out of revenge. Officials accused them of lying about their ethnicity and falsely obtaining citizenship, accusing them of being Bengali.

In court, where he did not have a lawyer to represent him, Kyaw Min explained to the court that his family is Rohingya but because this is not an officially recognized ethnic group that they had gone along with whatever the officials had put down for the purposes of ethnicity in the past. The court rejected this argument and found them guilty of lying about their identity. In order to penalize Kyaw Min and his family far beyond the maximum already set down in the citizenship law, the police also lodged four identical separate cases for different members of the family even though the offence was the same and under law they should have been lodged as a single case. In total Kyaw Min was sentenced to 47 years and his wife and three children, 17 years each. A lawyer lodged appeals for Kyaw Min, pointing to the factual and procedural flaws in the original case; however, the courts successively dismissed the appeals without considering the substance of the appeals at all and merely restating what had already been decided in the lower court.

In 2009 many other politically-motivated cases of this type continued against persons accused of various offences for which little if any evidence existed but whom the courts were obliged to convict because of their bureaucratic rather than judicial function. Nyi Nyi Aung, 25, and four others were charged with establishing an illegal organisation called Burma National Integrity to Democracy. In the trial it emerged that the accused were arrested on different days in January 2009 but the police did not bring the matter to court until April, during which time the defendants were kept in illegal custody and tortured. (Photo: U Kyaw Min)

The type of "evidence" that the police have presented to court includes a map of refugee camps in Thailand obtained from one of the defendants that is from a government-issued textbook.

Similarly, 53-year-old Sein Hlaing, a trader from Sanchaung, Rangoon and two other persons were detained in March and accused of having contact with unlawful associations from abroad, after they had received money to distribute to the families of prisoners who are facing financial hardships because of the loss of breadwinners. The three were kept illegally without charge until August. They were allegedly tortured to extract confessions and the police submitted evidence from the interrogations of the accused as proof of the alleged crime, even though under the Evidence Act such information does not constitute proof.

Some cases arising from the September 2007 monk-led protests also continued to make their way into the courts into late 2008 and early 2009. Pyi Phyo Hlaing and eight others were convicted in the Sanchaung Township Court to periods of eight to 24 years in jail on a gamut of charges. The cases against them were, like others of their type, full of errors in law and procedure, including that the oral and material evidence was obtained from the interrogations and searches of the bureau of military intelligence, in violation of the Evidence Act; that the witnesses were police or government officials; that the hearings were held behind closed doors; and, that multiple charges were lodged for the same offences. (Photo: Pyi Phyo Hlaing)

In another case of the same type, Phoe Htoke, a 47-year-old dried fish merchant was sentenced in December 2008 to three years with two others in the Kyimyindaing Township Court for having allegedly distributed unlawful fliers in the lead-up to the protests in September. Despite the many police allegations, they had no firm evidence to back most of the claims. For instance, they could not show proof of Phoe Htoke's and Kan Myint's involvement in a small protest in February, despite having taken photographs of it (the two are not in the photos). They also could not give exact dates that the two accused allegedly went to Thailand. Meanwhile, one of the accused men's defence lawyers, Saw Kyaw Kyaw Min, was forced to flee the country after being charged with obstructing the work of the court.

Three men who had earlier already been given jail terms over the 2007 protests were among others sentenced to additional periods. Win Maw, 46, Zaw Min, 39 and Aung Zaw Oo, 30, were all tried in a single case—despite not having known one another previously—under the Electronic Transactions Law 2004 in a closed court at the Insein Prison and on 5 March 2009 sentenced to an additional 10 years each. In his most recent report to the UN Human Rights Council, the Special Rapporteur on Myanmar wrote that this law violates a raft of international standards. He has called upon the government to review and revise this and other laws to lower the incidence of systemic rights abuse in Burma, but given that the problem in a case like this arises not merely from the law but also from the nature of a judiciary working as a bureaucracy, even in the unlikely event that the government followed his suggestion, it would not lead to any discernible change in circumstances for defendants like Win Min and the two others.

Ma Mar Mar Aye, 46, of Kyopinkauk, Pegu, was on August 15 arrested for allegedly attempt to provoke monks in her locality to do something to mark the two-year anniversary of the 2007 protests. After a hearing that lasted for only a few hours, on August 28 she was sentenced to two years in jail. During the perfunctory trial, a number of police and government officers appeared as witnesses for the prosecution but none of the monks who were the eyewitnesses to the supposed offensive behaviour of the accused were called. The defendant did not have a lawyer and was also not able to call any witnesses.

Mar Mar Aye is reported to suffer from heart disease and arthritis and has lost weight during the time that she has been detained. However, neither the International Committee of the Red Cross nor any outside agencies are currently able to routinely access Burma's prisons and therefore neither she nor the other detainees mentioned in

this report have obtained the support and assistance that they need from third parties to ensure even the minimum standards of their health and well being.

Endemic corruption

The problem of the total loss of habits of an independent judiciary is not only among judges and prosecutors in Burma but also among defence lawyers. Ordinary defence lawyers see their role not as advocates of law but as brokers. This is because ordinary criminal cases are decided through payment of money between the parties, to the police, the prosecutor, the judge and other personnel. The government itself to some extent acknowledges the corruption in the system, but is unable to address it because the corruption extends to all parts of government, because there are no institutional means to make change, and because the cooperation of the judiciary with the official programme depends upon its personnel being able to make money out of their positions. Therefore, the problem of the non-independence of the judiciary is intimately tied to the problem of endemic corruption.

Two 15-year-old girls, Ma Amy Htun and Ma Thuza Khaing, both of Daik-U, Pegu, were tried and imprisoned as adults in August because the police concerned with the case allegedly paid the prosecutor to overlook records that indicated they were children. The girls were arrested with a number of adults in February after a raid on a house to uncover alleged selling of illegal lottery tickets—which in Burma is extremely common. They were held in the police lock up without bail until the case came to court. While there, the families allegedly had to pay the police sentries 500 Kyat (USD 0.50) each time they came to bring food.

(Photo: April Htun and Thuza Khaing)

In court the accused denied the charges and said that the items of evidence were not theirs. They said that they had signed the search warrants out of fear of the police. They also said that they had never seen the two men who the police brought as supposed witnesses for the search and seizure at the house. They did not have lawyers to defend them. The judge was informed that the girls were all aged less than 16 but he failed to verify this fact, instead relying on allegedly falsified documentary evidence

from the police on their ages, after the prosecutor had received 30,000 Kyat (USD 30) from the police to try the case against the three girls as adults.

The costs for accused persons are not merely in court. They start from the moment of detention, and prompt payment can be vital not only for liberty but for survival itself, as Ko Aung Khaing Htun learned. On 19 June 2009 local council authorities in the delta detained the 31-year-old fisherman along with another man, Ko Tin Htun Lwin, at the Ngawun River, and took them back to their office. One of the officials told the two that if they paid 3000 Kyat each then they would be released. As the two men did not have the money on them, they agreed to release Tin Htun Lwin for him to go collect the money and come back.

(Photo: Ko Aung Khaing Htun)

The next day, June 20, when the money was delivered, an official told a member of Aung Khaing Htun's family that they had already released him; however, he had not come home. On June 21, Aung Khaing Htun's family received news in the morning that his body was found in a sentry hut. Around 20 friends and relatives of the victim went to see. His face was bloodied and there was bruising on the left side of his chest. According to them, he had been in good health before he was detained. Witnesses reported that council members allegedly beat Aung Khaing Htun and brought him to the place when he was nearly dead. They asked the cemetery keeper to bury him, but the latter refused because he could see that Aung Khaing Htun was not yet dead. After that, they dumped him in the nearby hut, where he died. The cost of his life was the failure to more quickly pay the equivalent of three US dollars.

Zero public confidence

The problems of non-independence and corruption together mean that people in Burma have zero confidence in the courts. People come before the judiciary because they are brought before it on charges. Most are poor people who are not represented by lawyers; a fact adverted by the Special Rapporteur on Myanmar in his 2009 report. He remarked of his visits to jails on his previous trip that nobody whom he spoke to at random had had legal counsel, and that some did not know the meaning of the word "lawyer". Some businesspeople also use the courts as part of their commercial negotiations, because if they have more resources than their rival then they can buy

judges to settle disputes. But ordinary people rarely bring genuine complaints to the courts. This is because there is no perception of the courts as places where someone can find justice. It is also because the courts have less power than other parts of the state apparatus. Instead, a person with a grievance against a state official will take the complaint to a senior person in that part of the administration to which the official belongs, such as the police or the Ministry of Home Affairs. Rather than being able to rely upon the judicial process to consider a complaint, the complainant must hope, in the manner of feudal rule, that someone high up will hear his or her prayer, take sympathy and do something about it.

To illustrate, the AHRC during the year obtained the details of a case of two young male victims who were tortured at a police station in an urban area, over an alleged robbery. According to the first, eight police interrogated him for three days, during which time they covered his face with a sarong and assaulted him. They allegedly hit him with batons over a hundred times on all parts of his body. Then they made him stand on tiptoes and for about two hours hold a pose like he was riding a motorcycle.

He added that his wife paid a total of the equivalent of around USD100, which is more than a couple of month's wages for poor people in Burma, to the police so that they would not torture him. His companion also said that he was detained and interrogated for two days during which time the police hit him and ran a piece of bamboo up and down on his shins.

Before turning to the question of complaint and the consequences of judiciary as bureaucracy, we need to make some observations about the methods of torture in this case, the victims, and the reasons for the use of torture, all of which run contrary to conventional ideas on torture globally.

First, the techniques used were advanced methods of routine torturers. They are the types commonly associated with military intelligence officers or with troops in outlying areas. The motorcycle and rolling bamboo are particularly familiar methods in the documentation in those categories of cases. However, the torturers in this case were police in an ordinary suburban station. Thus the methods of torture ordinarily associated with cases of political prisoners or alleged insurgents are actually in the entire system.

Second, the victims were typical of the overwhelming majority of victims throughout Asia: poor people accused of ordinary crimes, for which the purpose of the torture is both to extract confessions and/or to obtain money. In this case, the accused were freed after making some payments. However, there is no guarantee that they will remain this way. Once they have gone through this type of experience once, it can happen again at any time. In fact, one of them had already been interrogated once over the same alleged crime, and both expressed fear that they might be picked up again any day. Neither was taken before a judge, even though this should have happened within 24 hours of arrest.

Third, the victims claim they were innocent and that the police know this but they tortured them anyway to conduct a fake investigation, as a favour to a local businessperson. This too is a common feature of torture throughout Asia. It is also likely that the police have interrogated, tortured and taken money from other young poor men in the vicinity over the crime for which these two were also accused. One case like this can be very profitable for police. It is common to hear reports of dozens or even hundreds of people rounded up from an area in a general attempt to find some people on which to pin blame and make money at the same time.

Now to come back to the problem of zero public confidence, the distinctive problem for these victims of torture in Burma is not that they were tortured over an ordinary crime in an ordinary police station. This, as noted, is an experience they have in common with victims in India, Thailand, Sri Lanka, the Philippines, Bangladesh and Pakistan, among others. Rather, it is that because of the non-independence of the judiciary and endemic corruption, there is nothing that they can realistically do about it. In those other countries, the obstacles to bringing complaints of torture against the police are enormous, and the risks immense. But in them there at least exist courts that are in some way separate from the administration, rights groups and lawyers who can work on the cases with some effect and media that can report and publicize to generate public opinion.

By contrast, in Burma the only thing that the victims can really do is to lodge a complaint with high-up authorities and hope that someone will believe them and take sympathy. If they try to lodge a complaint in the courts, not only will they risk police reprisals, against which they will have no protection—since there are no groups in the country who can hide them and no media that can report on the case to assist with their safety through some publicity—but they will get no help from the courts anyway because they are not the ones with the power to afford them redress. The courts have no effective authority over other parts of government. As an arm of the executive, they

are not capable of hitting back. Unless an army general or someone else in a position of real importance is supporting a court order, the police can easily ignore it or get around it. Since in this case the allegations are against police officers, the police would use many methods to prevent them from being successful, or if in the extremely unlikely event that the court actually made an order against the police, could see that the officers concerned escape punishment by absconding and changing their identities, which has been done in the past.

The lack of public confidence in the work of the courts also derives from the subordinated position of defence attorneys in the system. Although technically defence lawyers hold an equal position to the prosecutors, in fact their status is much less than other officers of the courts and their position much more tenuous. This is evidence by the persistent targetting of defence lawyers as a means of quelling dissent not only outside but also inside the criminal justice system itself.

(Photo: U Aung Thein)

The law practiced in Burma is supposed to be adversarial, apparently not content with already pre-arranging for the outcomes of many cases through the orders of executive councils at all levels to trial judges, authorities also began taking action against defence lawyers who have been causing them embarrassment simply because they have been trying to do their jobs according to law. Towards the end of 2008, for instance, at least six lawyers in Burma were accused of criminal offences because of their attempts to defend clients whom the government intended to imprison irrespective of the trial process.

(Photo: U Khin Maung Shein)

Two were Supreme Court advocates U Aung Thein and U Khin Maung Shein, who were imprisoned for four months on a charge of contempt of court in November 2008. After they were released from prison in 2009, the authorities revoked their licences to practice. They were not given any opportunity to contest the revocations. Hundreds of other practitioners have similarly faced suspension or loss of licence on various pretexts, without being given a chance to defend themselves.

No public space

All of the above problems are connected to the lack of public space for debate. At present there are no publications in Burma that can report openly and honestly on the work of the courts. The government publications rarely make mention of the courts at all. Private publications do so more but they are tightly censored and very little of the types of problems outlined above ever makes it into print. The absence of public space for debate also means that the types of opportunities for public advocacy on cases that have existed under other regimes, such as those formerly in Latin America, do not exist in Burma. This also greatly hampers opportunities to address the endemic problems of the judiciary, and therefore its non-independence is affected by the lack of open media.

Even attempting to report on mundane affairs or on government-organised events can land journalists in trouble. For instance, during 2009 the AHRC reported that Judge Daw Amar of the Hmawbi Township Court on 27 August 2008 sentenced 30-year-old Aung Htun Myint, a freelance journalist with a local news journal, to three years' imprisonment for video recording proceedings at a polling booth—although the charge against him was that he had supposedly travelled to Thailand for video training. In fact, they had no evidence against him of this charge, which was totally unrelated to his being in Hmawbi. The investigating officer could not say what day he had supposedly gone to Thailand, for how long he had stayed or where he had stayed. But in the system of judiciary as bureaucracy that exists in Burma today this was irrelevant.

Two other news reporters, 24-year-old Ma Eint Khaing Oo and 29-year-old Kyaw Kyaw Thant were freed in a general prisoner release during September after they were imprisoned for taking people left homeless by Cyclone Nargis to request assistance from international organizations. The two were accused of attempting to cause a public disturbance because they took a group of women and children in June 2008 to the offices of the International Committee of the Red Cross and the United Nations Development Programme.

(Photo: Eint Khaing Oo)

The type of society in which natural disaster victims appealing for aid can conceivably be equated with a public disturbance is a type of society in which news can be harmful not only in terms of special security affairs and national interests but even in terms of

the most mundane and trivial matters. U Khin Maung Kyi, 45, was put in detention at the behest of local officials because he had complained about electricity supply in August 2009. The law under which he was imprisoned is intended for restraint of known habitual criminals on whom information has been received that they are likely to commit another offence, not ordinary citizens who make complaints.

Tellingly, among the many things of which the local authorities accused Khin Maung Kyi was that he had spread "unwanted" news. For people fortunate to live in places where government is more or less rational, this is an unfamiliar concept: news is often irrelevant, but there is no objective category of news that can be described as unwanted. In contrast, for an irrational government of the sort that exists in Burma, not only does such a category exist, but also it is essential to the management of society and the control of troublemakers like Khin Maung Kyi.

Under a rational state, communication is encouraged, even though it may inconvenience officials and may sometimes be frivolous or annoying. Measures are put in place to mollify dissatisfied members of the public and to take action to address complaints properly. Measures also exist to take action against people who abuse the system. Among these, criminal sanctions are a last resort. Things don't always work as they should, but attempts are made to reduce the opportunities for abuse of authority.

Under an irrational government, communication is not only discouraged in practice, but is opposed as a matter of principle. Irrationality does not need or want open exchange. Measures are put in place so that officials can silence those who irritate them by making complaints, and criminal sanctions, or at least the threat of criminal sanctions, are high on the list. Many opportunities are given for abuse of authority, and officials do not hesitate to use their power, or at least to remind citizens of it. This is why the types of problem associated with judiciary as bureaucracy, outlined above, are necessarily tied to the problem of the lack of public space on which to communicate about these very problems.

These are among the features of the system in Burma with which the international community must come to terms if it is going to say or do anything useful about the human rights situation there, rather than simply decry the unfair trials of a few prominent individuals. The judiciary is in its present form an appendage of executive authority. Unless its structurally and functionally subordinate position is addressed, it will continue to act as an instrument for the violation of rights rather than their defence. Under these circumstances, calls for the courts to decide cases fairly and in

accordance with international standards are completely meaningless. In such cases, the courts in Burma are not even capable of complying with domestic standards, and nor should they be expected to be, because they are performing an executive function, as a bureaucratic agency, not a judicial one at all.