

Urgent Appeal by the Burma Lawyers' Council
on behalf of
Nine Innocent People
Condemned to Die

To the International Community,
To Human Rights Organisations,
To the Legal Profession throughout the World,
To All Democratic Institutions
And to People Everywhere

On November 28, 2003, North Rangoon District Court, which is wholly subservient to the military junta of Burma, imposed the death penalty on nine innocent victims, namely Nai Yetkha and eight others. They had been charged with high treason under Section 122 of the Penal Code. It was alleged they had contacted opposition groups in exile, had detonated mines and bombs, and were planning to assassinate the rulers of the State.

The Burma Lawyers' Council, working with human rights and democratic organisations, has gathered all available information on the case. We recently obtained a copy of the judgement of the North Rangoon District Court and have made a legal analysis of it. A summary of our findings is given below.

Legal Defects

1. The complainant is a police officer, Ye Myint, and not the State. A charge of high treason may not be brought by an individual. It can only be brought by the State, and in the name of the State, by filing a First Information Report (F.I.R.).
2. The Code of Criminal Procedure, at Article 196, stipulates that, *inter alia*, cases involving the crime of high treason, as defined by Section 122 of the Penal Code, shall not be tried without prior sanction of the State President or government. The judgement makes no mention that this requirement has been met.
3. The police lodged a complaint with the court, which then proceeded to trial. This is in breach of procedure, which requires that the matter shall be referred back to the police for investigation. Due investigative proceedings, necessary for a fair trial, have been ignored.
4. All legal proceedings—pre-trial, trial and post-trial—should be conducted in a transparent manner. This did not happen. Instead:
 - a. The evidence suggests that the case was concocted behind closed doors by the military authorities, who then sought to give the matter an air of legality.
 - b. Questioning of the accused was for the most part conducted in secret interrogation centres of the Military Intelligence Service, where the treatment of suspects is akin to that once used by the Gestapo and the Kempetei. Moreover, Military Intelligence personnel are not legally accredited criminal investigation officers.
 - c. The trial was held *in camera*.
5. The prosecution produced a list of articles allegedly seized, but produced neither witnesses from any search party supposed to have seized them nor the articles themselves.
6. Written statements extracted by Military Intelligence personnel were produced as evidence. Such statements are inadmissible; *vide* sections 24 to 28 of The Evidence Act.
7. Witnesses for the prosecution quoted statements alleged to have been made by a certain U Myo Chit, who was not called as a

- witness. This uncorroborated hearsay is inadmissible under the rules of evidence.
8. The court examined no independent witnesses. There were six witnesses—all of them for the prosecution—of whom five were police officers while the sixth, by the name of Ko Than Htun, a claimed accomplice, was produced by the Military Intelligence Service.
 9. Ko Than Htun was originally arrested in connection with the alleged conspiracy. However, at the trial he was granted the status of approver. Yet there is no documentary evidence that the necessary authorization to use him in this capacity was obtained by the public prosecutor from the government law office. Furthermore, for him to have been appointed as approver, his confession would necessarily have been made to the public prosecutor. Such was not the case. Nor did any of the judges provide a statement in court to the effect that he or she had obtained a confession from Ko Than Htun, in conformity with the provisions of the Code of Criminal Procedure. The government law officer could have accepted Ko Than Htun as an approver prior to the hearing on the grounds that the latter agreed to make a statement in court in line with his confession. But no statement to this effect was contained in the judgement. It will be evident from the foregoing that this case was neither systematically prepared nor systematically prosecuted.
 10. The prosecution failed to produce to the court any admissible evidence, whether oral statement or document, that might support the very grave charge of high treason laid against the defendants.

Comments

The convictions were based entirely on statements taken by Military Intelligence personnel and so there is a likelihood they were obtained under extreme forms of duress.

The judgement handed down by the court concluded that Nai Yetkha was the ringleader; that he was in contact with opposition groups in exile; that he assembled and led a team of explosive experts for the purpose of planting bombs; that he planned to plant time-bombs in the Archeological Museum, Bagan, in Rangoon City Hall, and at the Memorial to Fallen Heroes; that he surveyed residences of State leaders; and that he planned to assassinate the State leaders. The judgement

made no reference whatsoever to any verbal or written testimony or other documentary evidence in support of these contentions.

The case appears to have been fabricated by the Military Intelligence Service, and it is apparent that they are able to make the police—the instrument of law enforcement—do as they wish. Material evidence which the prosecution relied upon was not produced to the court. It is also clear that the Military Intelligence Service dominates the courts, and an independent judiciary is therefore absent.

This case is not an isolated example. On the contrary, it is typical of the many repressive techniques used to keep the military junta in power, by silencing—one way or another—those who express support for democracy.

A political trial?

Nai Yetkha is a leading figure in the New Mon State Party, an ethno-political organization dedicated to defending the rights of the Mon people of Burma. Until 1995 when circumstances forced it to seek an uneasy accommodation with Rangoon, the NMSP was part of the broad-based democracy movement opposed to the military dictators. Despite the NMSP seeking to pursue its goals by peaceful means (or having ‘entered the legal fold’—as the government’s propaganda is fond of putting it), the military régime constantly tries to wear away any organisation that in some measure eludes its total dominance. Nai Yetkha’s removal is a blow to the NMSP and indirectly to all similar, ‘cease-fire’ organisations—for it is a warning that legitimate, political means of seeking human and cultural rights are unacceptable to Burma’s military rulers.

Zaw Thet Htwe, a.k.a. Thet Zaw, one of the co-accused, is chief editor of Burma’s most successful magazine, *Eleven Sport*. *Eleven Sport* has a larger circulation than any other journal in the country. Although, as is well known, freedom of the press is non-existent in Burma, Zaw Thet Htwe was dedicated to this cause. His conviction and sentence are a grim reminder to other editors to remain meekly submissive.

Request for Help

The Burma Lawyers' Council implores the governments of all democratic countries, human rights defenders, legal organizations, political parties,

and people everywhere who are deeply attached to human rights and to justice to do everything in their power to persuade the military junta to release unconditionally the nine victims. There is no time to be lost: their tormentors are intent upon seeing them hanged by the neck until dead.

Burma Lawyers' Council

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