

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

Research Response Number: MMR34750
Country: Myanmar
Date: 19 May 2009

Keywords: Burma (Myanmar) – Shan – Bamar – Buddhist – Military officers – Maymyo – 1988 Uprising – SLORC – Courts – Written notices – Bribery

This response was prepared by the Research & Information Services Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum. This research response may not, under any circumstance, be cited in a decision or any other document. Anyone wishing to use this information may only cite the primary source material contained herein.

Questions

- 1. What is the status of the Shan and Bamar ethnic groups?**
- 2. Is being a Buddhist consistent with being a military officer in the late 80's/early 90's?**
- 3. Did the uprising in 1988 involve the town of May Myo and did it involve families of the military?**
- 4. What is the SLORC?**
- 5. Do courts, both civil and military issue written notices of charges issued to accused people and are written notices issued in respect of sentences handed down?**
- 6. Do the military release people sentenced for long terms on the basis of being paid bribes?**

RESPONSE

1. What is the status of the Shan and Bamar ethnic groups?

The 'Burma Human Rights Yearbook 2007' written by the Human Rights Documentation Unit of the National Coalition Government of the Union of Burma, a government-in-exile outside Burma, indicates that the Shan ethnic group is one of "the eight main ethnic families in Burma." The yearbook also indicates that the Bamar ethnic minority is on "the SPDC [State Peace and Development Council] list of the 134 'officially' recognized ethnic minorities from the eight main ethnic families in Burma." The Bamar ethnic minority is one of the nine ethnic minorities from the Burman ethnic group. The yearbook also includes information on the political situation in Shan state, which it describes "[a]s the largest ethnic minority state in Burma, and... one of the most ethnically diverse". According to the yearbook:

As the largest ethnic minority state in Burma, and as one of the most ethnically diverse, it should come as no surprise that numerous groups operate in Shan State. Acutely aware that

this may represent a threat to their control over the region, the regime has maintained a consistent and heavy military presence in the state. The majority of armed ethnic groups operating in Shan State have allied themselves with the regime and signed ceasefire deals. Some groups, however, such as the Shan State Army – South, continued to oppose the regime throughout 2007 (Human Rights Documentation Unit, National Coalition Government of the Union of Burma 2008, ‘Burma Human Rights Yearbook 2007’, NCGUB website, September, pp. 721 & 746 <http://www.ncgub.net/BHRY/2007/index.html> - Accessed 18 February 2009 – Attachment 1).

The section on the Shan ethnic group in Myanmar/Burma in the Minority Rights Group International ‘World Directory of Minorities and Indigenous Peoples’ includes the following information:

Most ethnic Shan live in the Shan State, though there are also pockets in other parts of Burma such as in Kachin State. Most of them are Theravada Buddhists, with some elements of animist practices, and speak a language which is part of the Tai-Kadai language family, and closely related to Thai and Lao.

As there are no reliable population figures for Burma since the Second World War, the size of the Shan minority is a matter of some uncertainty, though most outside sources appear to agree that the Shan are probably the country’s largest minority (Ethnologue [www.ethnologue.com] estimates 3.2 million in 2001; the US State Department gave an estimate of over 4 million in 2007). The term Shan itself is however problematic, at least as it is used by Burma authorities, since they include under this term 33 ethnic groups that are in fact quite distinct and to a large degree unrelated except for close geographic proximity.

The directory provides background information on the Shan in Burma and indicates that a Shan State was created “under the 1948 Constitution of independent Burma, which also provided for a right to secession after 10 years.” However, “[t]he theoretical right to secession given by the constitution was effectively cast aside after General Ne Win’s coup d’état in 1962, and was seen by some as an important factor fuelling the Shan uprising against the increasingly centralizing efforts of state authorities, especially with the 1974 Constitution. It was also from 1962 that the government’s increased ‘Burmanization’ efforts became more blatant, such as making Burmese the exclusive medium of instruction in state schools (with on occasion some teaching of English).” The directory also indicates that:

Two main armed groups were based in Shan State: the Shan State Army (also known as the Mong Tai Army, led by drug kingpin Khun Sa) and the Shan State Army/Restoration Council of Shan State. The former concluded a ceasefire agreement with the Burmese government in 1995 and effectively disbanded in 2005, though some of its units joined the Shan State Army/Restoration Council of Shan State or continued to operate as distinct factions, such as the Shan United Revolutionary Party and the Shan State Army-South.

There was a massive counterinsurgency campaign against Shan groups after 1995. Especially since this date thousands of Shan have been seeking refuge in Thailand, as the Burmese army began to forcibly relocate hundreds of villages and expel hundreds of thousands of ethnic Shan (300,000 according to according to the NGO Refugees International, 2004), with some displacement also occurring because of land confiscation by the Burmese army and State Peace and Development Council (SPDC).

The situation was further complicated more recently with the arrival of the Wa, who are being relocated to parts of the Shan State by the Burmese government. This is seen as an attempt by the Burmese government to use the Wa to fight the Shan resistance forces. From 1995 there

have been widespread reports of Shan being subjected to human rights violations such as arbitrary arrests, torture, rape, extra-judicial executions, forced labour, destruction of property and discrimination against members of the Shan minority. Hundreds of thousands of Shan are thought to have fled their homes as a result, as well as to avoid fighting between rebel groups and the Burmese army.

In relation to the situation in 2006 and 2007, it is stated in the directory that:

There has not been any significant improvement in 2006 and 2007: the Shan continue to be at the receiving end of violations of their human rights because of the ongoing conflict between some Shan rebel groups and the Burmese army. Military and other government authorities are persistently reported as still engaged in 2006 and 2007 in patterns of gross violation of human rights, including forced labour, conscription, arbitrary detention, torture, rape, sexual slavery and extra-judicial killings, especially in central and southern Shan State as the SPDC's armed forces engage the Shan State Army-South. Many Shan fled to Thailand in 2006 as refugees from central townships of Shan State due to village relocations, forced labour (to work for example in castor oil plantations), and other human rights violations. Leaders of the Shan Nationalities League for Democracy (closely associated with Aung San Suu Kyi's National League for Democracy), first arrested in 2005, were still detained in early 2007.

The directory also includes details on restrictions on education and the teaching of the Shan language, the resettlement of ethnic Burman and Wa into Shan state, military confiscation of Shan farming land and the forcible relocation of mainly ethnic Shan from the area of the proposed Tasang Dam in Shan State (Minority Rights Group International (undated), 'Myanmar/Burma – Shan' in 'World Directory of Minorities and Indigenous Peoples', Minority Rights Group International website <http://www.minorityrights.org/4481/myanmarburma/shan.html> - Accessed 14 May 2009 – Attachment 2).

The US Department of State report on human rights practices in Burma for 2008 refers to Burma being “ruled by a highly authoritarian military regime dominated by the majority ethnic Burman group.” It is stated in the report that:

Wide-ranging governmental and societal discrimination against minorities persisted. Animosities between the country's many ethnic minorities and the Burman majority, which has dominated the government and the armed forces since independence, continued to fuel active conflict that resulted in serious abuses during the year. The abuses included reported killings, beatings, torture, forced labor, forced relocations, and rapes of Chin, Karen, Karenni, Rohingya, Shan, Mon, and other ethnic groups by government soldiers. Some armed ethnic groups also may have committed abuses, but on a much smaller scale than the government army.

...Ethnic minority groups generally used their own languages at home. However, throughout all parts of the country controlled by the government, including ethnic minority areas, Burmese remained the mandatory language of instruction in state schools, and teaching in local languages was not offered. Even in ethnic minority areas, most primary and secondary state schools did not offer instruction in the local ethnic minority language. There were very few domestic publications in indigenous minority languages.

The government continued to resettle groups of ethnic Burmans in various ethnic minority areas through the establishment of “model villages” in Rakhine State and other regions. Many of these new inhabitants had been released from prison on the condition that they resettle in a

“model village.” Government jobs in ethnic minority regions, including as teachers, were increasingly reserved for ethnic Burmans, according to reports from Kachin and Kayah states.

In relation to the Shan ethnic group, the report includes information on abuses by government soldiers in Shan state and a continuing insurgency against the government by the Shan State Army-South group. According to the report:

There were numerous reports that government troops looted and confiscated property and possessions from forcibly relocated persons or persons who were away from their homes. The materials often were used for military construction. Commandeering privately owned vehicles for military or VIP transport without compensating the vehicle owners was commonplace throughout the country. The practice was particularly widespread in Shan, Kayah, and Karen states and in areas of Mon State and Bago Division.

In these same areas, thousands of civilians were displaced from their traditional villages--which often were then burned to the ground--and moved into settlements tightly controlled by government troops in strategic areas. In other cases villagers driven from their homes fled into the forest, frequently in heavily mined areas, without adequate food, security, or basic medical care.

...Ethnic insurgent groups continued to battle the government for autonomy or independence, including the Shan State Army-South, the Karenni National Progressive Party, and the Karen National Union (KNU), through its armed wing, the Karen National Liberation Army. In ethnic minority regions, military personnel reportedly killed and raped civilians, shelled villages and burned homes, destroyed food and seized possessions, confiscated land, forced villagers to work on infrastructure projects, and demanded that villagers provide food and construction materials for military camps.

...There were reports of disappearances in connection with the conflicts in Bago Division and Karen, Kayah, and Shan states.

...Newly arrived refugees and internally displaced persons (IDPs) near the Thai border reported that government soldiers in Chin, Shan, Kayah, Kachin, and Karen states continued to rape ethnic women and girls. The Thailand-based Karen Women's Organization cited 959 cases of women and girls in Karen State who reported sexual abuses in the past 25 years. Additionally, NGOs and international organizations continued to report numerous sexual assaults by soldiers throughout the rest of the country.

...Military forces also continued to abuse villagers and drive them from their homes during campaigns in Bago Division and Kayah and Shan states.

The report also indicates that “[t]here was no information on the condition of imprisoned Shan National League for Democracy (SNLD) Chairman Khun Htun Oo or SNLD member U Sai Hla Aung, who were suffering from numerous health problems but had not been permitted to receive medical attention” (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Burma*, February, Introduction, Sections 1(c), (f) & (g), 5 – Attachment 3).

An Amnesty International report dated 24 October 2007 refers to U Khun Htun Oo, “an elected parliamentarian and ... the most senior political representative of the Shan, the largest of Myanmar’s ethnic minorities... serving a 93-year prison sentence for taking part in a private discussion of official plans for political transition. He is being held in one of the most remote prisons in Myanmar” (Amnesty International 2007, *Myanmar: Eighteen years of*

persecution, 24 October <http://www.amnesty.org/en/news-and-updates/feature-stories/myanmar-eighteen-years-persecution-20071024> - Accessed 11 May 2009 – Attachment 4).

An article in the *New Statesman* dated 14 August 2006 indicates that “[t]he politics of ethnicity in Burma is complicated.” According to the article:

The politics of ethnicity in Burma is complicated. Although the tatmadaw is largely Burman, it is not exclusively so, and neither is its brutality. In 1974 the junta ordered Chin and Kachin soldiers to quell street protests in Rangoon. Directly copying the British tactic of using soldiers from one part of the country to crush protest in another, these soldiers foreshadowed the iron fist of 1988. The ethnic insurgencies likewise suffer from factionalism, both ethnic and political. External political influence has also had an influence, with the Chinese funding the Communist Party of Burma's war from the 1940s to the late 1980s, and CIA and Kuomintang involvement further complicating the picture (Rigg, J. 2006, ‘The forgotten war’, *New Statesman*, 14 August – Attachment 5).

Although dated, an extract from the 1993 publication *Burma: Ethnicity and Insurgency* includes the following information on ethnic groups in Burma:

According to the 1974 constitution, Burma is divided into seven union republics, one each for the Rakhine, Chin, Kachin, Karen, Kayah (or Karenni), Mon, and Shan nations, as well as seven divisions for the Burman majority, these being Rangoon, Irrawaddy, Tenasserim, Pegu, Magwe, Mandalay, and Sagaing (see Map 1). This division is highly artificial [sic] and strongly challenged by all ethnic minorities.

The extremely large number of ethnic minorities is one of the most important factors in the turbulent situation in present-day Burma. Of Burma's population of roughly 42 million people, only 60 percent are Burmans. The remaining 40 percent of the population is split among more than a hundred minority groups and mountain tribes. Of the total population, roughly one quarter lives in the cities. Most of these are Burmans, although significant ethnic minority groups can also be found in certain cities. For instance, Moulmein is inhabited by a large Mon population.

...The current official ethnic structure of Burma, with seven divisions mainly [page 11 begins] populated by Burmans and seven states populated by the minorities, is not at all consistent with the true ethnic situation, even though the picture looks neat on a map. The actual ethnic situation is considerably more confused. Not only are towns and villages of different ethnic groups often mixed within the same general area, but the ethnic groups are themselves split into numerous sub-groups. More than a hundred different languages have been identified in Burma, and the minority groups that can be distinguished from each other may well number up to two hundred.

...The Burmans, ethnically around 58-60 percent of the population (if language, instead of ethnicity, forms the selection criteria, they are more numerous), inhabit mainly the central lowlands, the large plains around the Irrawaddy and the Sittang rivers (see Map 5). It should, however, be noted that the Burmans, too, do not form a homogeneous population. A number of sub-groups do exist, such as the Intha and the Danu. In, for instance, the Tavoy district of Lower Burma, the Tavoyan rebellion of the eighteenth century is still remembered together with separatist hopes and ambitions. In this area, other Burmans are even today referred to as Pagans (a name derived from the old capital of Pagan) (Fredholm, M. 1993, ‘The Country and the Population’ in *Burma: Ethnicity and Insurgency*, Praeger, London – Attachment 6).

2. Is being a Buddhist consistent with being a military officer in the late 80's/early 90's?

Although not specifically in relation to the period of the late 1980's to the early 1990's, the US Department of State report on religious freedom in Burma for 1999 indicates that “[n]on-Buddhists continued to experience discrimination at upper levels of the public sector” and the Government discouraged “Muslims from entering military service, and Christian or Muslim military officers who aspire to promotion beyond middle ranks are encouraged by their superiors to convert to Buddhism.” It is stated in the report that:

Non-Buddhists continued to experience discrimination at upper levels of the public sector. Only one non-Buddhist served in the Government at ministerial level, and the same person, a brigadier general, is the only non-Buddhist known to have held flag rank in the armed forces during the 1990's. The Government discourages Muslims from entering military service, and Christian or Muslim military officers who aspire to promotion beyond middle ranks are encouraged by their superiors to convert to Buddhism.

The report notes that “[t]he great majority of the country's population at least nominally follow Theravada Buddhism, although in practice popular Burmese Buddhism includes veneration of many indigenous pre-Buddhist deities called “nats” and coexists with astrology, numerology, and fortune-telling, which are widely practiced and influential.” Also, “[t]hrough the 1990's, the Government increasingly has made special efforts to link itself with Buddhism as a means of asserting its own popular legitimacy.” However, the military government also “continued to enforce restrictions on the Buddhist clergy's freedom of expression and association, which it has intensified since October 1990 in response to widespread support among Buddhist monks for human rights and democracy” (US Department of State 1999, *International Religious Freedom Report for 1999 – Burma*, September, Section 1 – Attachment 7).

The section on discrimination based on race, sex, religion, language or social status in the US Department of State report on human rights practices in Burma for 1988 indicates that “[m]inorities are underrepresented in the Government, are largely excluded from the military leadership, and suffer other forms of discrimination” (US Department of State 1989, *Country Reports on Human Rights Practices for 1988 – Burma*, February, Section 5 – Attachment 8).

A Human Rights Watch report dated July 2002 refers to General Ne Win initiating “the systematic expulsion of Muslims from government and the army” after he “seized power in 1962.” According to the report:

During the British colonial period and the early years of independence, Muslims played an important role. They held high positions in government and civil society. They were also in the forefront of the fight for independence from the British. After independence, Muslims continued to play a prominent role in the country's business, industrial, and cultural activities. Many Muslims were public servants, soldiers, and even officers. At the time of the last democratically elected parliament in the 1960s, there was at least one Muslim minister and several Muslim members of parliament.

This all changed after General Ne Win seized power in 1962. He initiated the systematic expulsion of Muslims from government and the army. There is no written directive that bars Muslims from entry or promotion in the government, according to Muslim leaders in Burma, but in practice that is what happens.

Although there is no official state religion, the Burmese military government actively endorses Theravada Buddhism in practice, as have previous governments – both civilian and military. The government is increasingly seen identifying itself with Buddhism... While undoubtedly motivated in part by religious conviction, this close identification is also seen by many observers as part of the military's strategy to find some form of legitimacy for its rule (Human Rights Watch 2002, *Crackdown on Burmese Muslims*, July, pp. 3-4 http://www.hrw.org/legacy/background/asia/burmese_muslims.pdf - Accessed 12 May 2009 – Attachment 9).

3. Did the uprising in 1988 involve the town of May Myo and did it involve families of the military?

A search of the sources consulted did not locate specific information in relation to whether the uprising in 1988 involved the town of Maymyo.

An article in the *Far Eastern Economic Review* dated 25 August 1988 includes information on a Defence Service Academy at Maymyo. It is stated in the article that:

Much will depend on the attitude of the army officer corps, in particular the professionally trained graduates of the Defence Service Academy (DSA) at Maymyo, and others who took military training after graduating from civilian universities. Mostly ethnic Burmans and a few Chins, these now form about two-thirds of the officer corps in the 170,000-strong army. The first batch of DSA cadets graduated in 1960 and are now pushing into higher ranks, against the considerable distrust of the older veterans and those who have risen through the ranks.

Some academy-trained officers were involved in an unsuccessful coup attempt in 1976, aimed at taking the army back to the barracks. Partly because of the distrust, many DSA graduates are kept out in the field. However, this may have created another split with the older leadership, as many field officers are believed to be convinced of the futility of protracted war with ethnic minorities ('Masses in revolt against stifling authoritarian grip' 1988, *Far Eastern Economic Review*, 25 August – Attachment 10).

A *Reuters News* article dated 16 September 1988 refers to "an army broadcast from Maymyo, the Defence Services Academy headquarters northeast of Mandalay," warning "opposition forces struggling to unseat the BSPP [Burma Socialist Programme Party] against 'trying to destroy the state by dividing the defence forces.'" The broadcast "said the military was actively fighting guerrillas despite the political turmoil" and "that between August 5 and September 5 'when demonstrations were going on in the cities ... (and) circumstances were confusing' army troops engaged rebel forces 24 times, killing 47 guerrillas and capturing 11 for eight soldiers killed and 16 wounded" (Katigbak, J. 1988, 'Army stands aside as political turmoil engulfs Burma', *Reuters News*, 16 September – Attachment 11).

Although not specifically referring to Maymyo, the Amnesty International 1989 report on Burma indicates that by August 1988, the unrest in Burma "had become nationwide, with protesters demanding an end to military rule and the establishment of parliamentary democracy." The report also indicates that "[i]n late September the government announced that it had suppressed 'strike centres' in over 100 townships. In the process, it said, 180 demonstrators had been killed. The centres, which had been established throughout the country, had organized demonstrations and in some cases had functioned as a local administration" (Amnesty International 1989, *Amnesty International Report 1989 – Burma (Myanmar)* – Attachment 12).

The US Department of State report on human rights practices in Burma for 1988 also provides information on the 1988 uprising in Burma (US Department of State 1989, *Country Reports on Human Rights Practices for 1988 – Burma*, February, Introduction, Sections 1(a)-(f), 2(a) & (b), 3 – Attachment 8).

In relation to whether the uprising in 1988 involved the families of the military, an Amnesty International report dated December 1988 indicates that on 19 September 1988, troops reportedly opened fire in Sanchaung township “on a group of local residents who had been ordered by another military unit to remove one of the many barricades that had been set up across the capital’s streets. One of the youths was killed and seven others were wounded. One of the wounded, named Maung Myint, the son of a high ranking military officer, was hit by four bullets” (Amnesty International 1988, *Burma: The 18 September 1988 Military Takeover and Its Aftermath*, December, ASA 16/15/88, p. 5 – Attachment 13).

Sources refer to some members of the military supporting the protestors during the unrest in Burma in 1988. The *Reuters News* article dated 16 September 1988 refers to a Western diplomat saying that “there was no sign of a split in the armed forces despite the defections to the opposition of small groups of air force and navy servicemen in recent weeks.” The article also indicates that:

On the surface the army stands squarely behind the BSPP. Most of its high-level commanders are BSPP members and recipients of party largesse. Many top government jobs are held by senior officers.

This has bred jealousy in the lower ranks and many of them are sympathetic to the people, diplomats said (Katigbak, J. 1988, ‘Army stands aside as political turmoil engulfs Burma’, *Reuters News*, 16 September – Attachment 11).

Another article dated 18 September 1988 indicates that security forces had “sided with protesters in several towns, including Victoria Point in the southernmost Mergui province bordering Thailand. On Sept. 9, about 500 servicemen mutinied and joined protest marches in Rangoon in the first major military defections in the capital” (Win, S. 1988, ‘Burma’s Military Seizes Power, Protesters Take To Streets’, *The Associated Press*, 18 September – Attachment 14).

4. What is the SLORC?

The US Department of State report on human rights practices in Burma for 2003 indicates that the SLORC is the State Law and Order Restoration Council which took control of the country in 1988. In 1997, the SLORC’s name was changed “to the State Peace and Development Council (SPDC).” It is stated in the report that:

Burma is ruled by a highly authoritarian military regime. In 1962, General Ne Win overthrew the elected civilian government and replaced it with a repressive military government dominated by the majority Burman ethnic group. In 1988, the armed forces brutally suppressed pro-democracy demonstrations, and a group composed of 19 military officers, called the State Law and Order Restoration Council (SLORC) took control, abrogated the 1974 Constitution, and has ruled by decree since then. In 1990, pro-democracy parties won over 80 percent of the seats during generally free and fair parliamentary elections, but the Government refused to recognize the results. In 1992, then-General Than Shwe took over the

SLORC and in 1997 changed its name to the State Peace and Development Council (SPDC). The 13-member SPDC is the country's de facto government, with subordinate Peace and Development Councils ruling by decree at the division, state, city, township, ward, and village levels (US Department of State 2004, *Country Reports on Human Rights Practices for 2003 – Burma*, February, Introduction – Attachment 15).

The US Department of State report on human rights practices in Burma for 2008 also indicates that the “[t]he State Peace and Development Council (SPDC), led by Senior General Than Shwe, was the country's de facto government.” According to the report:

Burma, with an estimated population of 54 million, is ruled by a highly authoritarian military regime dominated by the majority ethnic Burman group. The State Peace and Development Council (SPDC), led by Senior General Than Shwe, was the country's de facto government. Military officers wielded the ultimate authority at each level of government. In 1990 prodemocracy parties won more than 80 percent of the seats in a general parliamentary election, but the regime continued to ignore the results. The military government controlled the security forces without civilian oversight (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Burma*, February, Introduction – Attachment 3).

The previously mentioned ‘Burma Human Rights Yearbook 2007’ provides a history of government in Burma from 1947 onwards, including the period of SLORC military rule between 1988 and 1997, and SPDC military rule from 1997 onwards (Human Rights Documentation Unit, National Coalition Government of the Union of Burma 2008, ‘Burma Human Rights Yearbook 2007’, NCGUB website, September, pp. 15-25 <http://www.ncgub.net/BHRY/2007/index.html> - Accessed 18 February 2009 – Attachment 1).

5. Do courts, both civil and military issue written notices of charges issued to accused people and are written notices issued in respect of sentences handed down?

‘The Code of Criminal Procedure’ of Myanmar includes sections that cover the providing of details of charges and judgments by courts to the accused. Chapter XVIII of the Code sets out the procedure to “be adopted in inquires before Magistrates where the case is triable exclusively by a Court of Session or High Court or, in the opinion of the Magistrate, ought to be tried by such Court.” Section 210 of the Code indicates that:

- 210.** (1) When, upon such evidence being taken and such examination (if any) being made, the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial [sic], he shall frame a charge under his hand declaring with what offence the accused is charged.
- 2) As soon as such charge has been framed, it shall be read ~d [sic] explained to the accused, and a copy thereof shall, if he so requires, be given to urn [sic] free of cost.

Chapter XIX of the Code provides information on charges under the Code. According to Section 221(1) of the Code, “[e]very charge under this Code shall state the offence with which the accused is charged”, and Section 221(6) indicates that “[t]he charge shall be written [* * * *] in the language of the Court.” Pursuant to Section 227 of the Code:

- 227.** 2(1) Any Court may alter or add to any charge at any time before judgment is pronounced, or, in the case of trials by jury before the Court of Session or High Court, before the verdict of the jury is returned [sic].

2) Every such alteration or addition shall be read and explained to the accused.

In relation to judgments of the courts, Chapter XXVI of the Code includes the following information:

366. (1) The judgment in every trial in any criminal Court of original jurisdiction shall be pronounced, or the substance of such judgment shall-explained:-----

(a) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(b) in the language of the Court, [* * *](Note) or in some other language which the accused or his pleader understand:

Provided that the whole judgment shall be read out by the presiding Judge if he is requested so to do either by the prosecution or the defence.

...**371.** (1) On the application of the accused a copy of the judgment shall be given to him without delay. Such copy shall, in any case other than a summons case, be given free of cost.

(2) In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost (Government of Myanmar (undated), 'The Code of Criminal Procedure (Chapters XVI – XXX)', Burma Lawyers' Council website http://www.blc-burma.org/html/Criminal%20Procedure%20Code/cpc_16-30.html - Accessed 13 May 2009 – Attachment 16).

The US Department of State report on human rights practices in Burma for 2008 indicates that “[t]here is a fundamental difference between criminal trials involving political prisoners and defendants charged with common crimes” in Burma. It is stated in the report that:

The judiciary is not independent of the government. The SPDC appoints justices to the Supreme Court, which in turn appoints lower court judges with SPDC approval. These courts adjudicate cases under decrees promulgated by the SPDC that effectively have the force of law. The court system includes courts at the township, district, state, and national levels. While separate military courts for civilians do not exist, the military regime frequently directs verdicts in politically sensitive trials of civilians.

The government continued to rule by decree and was not bound by any constitutional provisions providing for fair public trials or any other rights. Although remnants of the British-era legal system remain formally in place, the court system and its operation were seriously flawed, particularly in the handling of political cases. The misuse of blanket laws--including the Emergency Provisions Act, Unlawful Associations Act, Habitual Offenders Act, Electronic Transactions Law, Video Act, and Law on Safeguarding the State from the Danger of Subversive Elements--as well as the manipulation of the courts for political ends continued to deprive citizens of the right to a fair trial and to stifle peaceful dissent. Executive Order 5/96, which provides for the arrest of any person deemed a threat to the National Convention and the “roadmap to democracy,” effectively stifled open debate among citizens. Pervasive corruption further served to undermine the impartiality of the justice system.

...There is a fundamental difference between criminal trials involving political prisoners and defendants charged with common crimes. Some basic due process rights, including the right

to be represented by a defense attorney, were generally respected in common criminal cases but not in political cases that the government deemed especially sensitive. By law the government is not obligated to provide an attorney at public expense except in death penalty cases. Juries are not used in any criminal trials. In common criminal cases, defense attorneys generally were permitted 15 days to prepare for trial, could call and cross-examine witnesses, examine evidence, and were granted a 15-day delay for case preparation. However, their primary function was not to disprove their client's guilt, which was usually a foregone conclusion, but rather to bargain with the judge to obtain the shortest possible sentence for their clients. Political trials often were not open to family members or the public, and defense attorneys frequently were not permitted to attend. Reliable reports indicated that senior government authorities dictated verdicts in political cases, regardless of the evidence or the law.

The report also indicates that “[t]he government often held persons under the Emergency Act of 1950, which allows for indefinite detention. In practice many persons were held for years without being informed of the charges against them” (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Burma*, February, Sections 1(d) & (e) – Attachment 3).

An earlier Amnesty International report dated July 2003 provides information on the treatment of political prisoners in Myanmar. In relation to charges brought against suspects following their arrest, the report indicates that:

It is not clear whether MI [Military Intelligence] personnel informed suspects of the reasons for their arrest and the charges brought against them, although political suspects were subjected to prolonged interrogation. Principle 10 of the Body of Principles states: “*Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.*” In most cases it is also not clear to Amnesty International at what stage detainees were informed of the charges against them - it appears that they may not have been told until they were brought to court at the beginning of their trial.

... Most political detainees were not permitted to see a lawyer until charges were brought against them, if indeed they were permitted to seek counsel at all. According to senior police officials whom Amnesty International met with on 5 February 2003, only once an individual is formally charged under the Penal Code, will he/she be allowed a visit from a lawyer. Police officials also explained that the maximum time which someone can be held without charge or access to a lawyer is two to four weeks, depending on the severity of the crime. The reason given for this delay in access to counsel was that a lawyer would not be able to assist a client until there was a clear charge. However, Principle 7 of the Basic Principles on the Role of Lawyers states: “*Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.*”

In relation to sentencing, it is stated in the report that:

Amnesty International's interviews with former political prisoners about their trials indicate that in practice the independence of the judiciary is severely compromised in political cases... Former political prisoners also reported that the judges' deliberation consisted of little more than the judge reading out their sentence from a letter he had been given or a piece of paper he took from his pocket. Most former prisoners said that they believed that the sentence was determined by Military Intelligence, not by the judge, who was acting on MI's orders (Amnesty International 2003, *Myanmar: Justice on Trial*, July, ASA 16/019/2003, pp. 10-11, 13 & 22-23 – Attachment 17).

6. Do the military release people sentenced for long terms on the basis of being paid bribes?

An article dated 30 July 2008 indicates that “Burmese military junta officials in Kachin State in northern” were “accepting bribes to release prisoners.” According to the article:

The Burmese military junta officials in Kachin State in northern are accepting bribes to release prisoners. Criminals sentenced to jail can bribe the authorities to be freed. But it costs a lot of money, a source said.

This was revealed with a drug dealer in Myitkyina, the capital of Kachin State being released recently from the prisoners (Ye-Bet) camp in Dumbang village which is on the way to Danai (Tanai) on the Ledo road.

“My friend was sentenced to 12 years in prison on a drugs case but he was released last month after bribing the authorities,” said a source close to the prisoner who was recently released from Ye-bet camp.

Before he was sentenced, his family had bribed the authorities for his release, but it could not be done then, he added.

He said that his family bribed 5 million Kyat (est. US \$4,237) to the authorities for his release and now he is in hiding for a while because he is afraid of being rearrested by the police (‘Junta bribed to release prisoners in Kachin State’ 2008, *Kachin News Group (KNG) – Burma*, 30 July – Attachment 18).

An article in *The Washington Post* dated 4 December 2007 refers to veterans of the opposition movement agreeing that protests which had been repressed by the Burmese government in September 2007 “revealed significant weaknesses in the intelligence arm of the military junta.” Persons released from detention had “described their interrogators as confused, inept and sometimes willing to accept bribes to release detainees.” It is stated in the article that:

After the demonstrations, the military detained more than 3,000 people, holding many in makeshift detention centers. Individuals released from detention in recent weeks have described their interrogators as confused, inept and sometimes willing to accept bribes to release detainees. They often argued among themselves in front of detainees (Harden, B. 2007, ‘Capitalizing on Burma’s autumn of dissent’, *The Washington Post*, 4 December – Attachment 19).

Another article dated 1 October 2002 in relation to human trafficking from Kyaikto town and Kyaikmayaw town in Mon State in Burma to Thailand indicates that:

While human traffickers are prosecuted and sometimes arrested on military orders, lower ranking military officers are in the habit of releasing asking for bribes and releasing them. On 25 September, local Military Intelligence personnel arrested U Kyaw Oo and Ma Tin San in Kyaikto town while simultaneously human traffickers were arrested in Kyaikmayaw. However, they were released immediately after paying 10 lakh Kyats to the police, locals reported (Hein, N. N. 2002, ‘Human trafficking increasing’, *Mizzima News Group*, 1 October – Attachment 20).

The US Department of State report on human rights practices in Burma for 2008 refers to corruption and impunity being “serious problems” in the Myanmar Police Force, which was “under direct military command but falls administratively under the Ministry of Home Affairs. Police primarily deal with common crimes and do not handle political crimes.” Officers from Military Security Affairs (MSA) and Special Branch (SB) police officers were “responsible for detaining persons suspected of ‘political crimes’ perceived to threaten the government.” The report also notes that in relation to the judiciary, “[p]ervasive corruption further served to undermine the impartiality of the justice system” (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Burma*, February, Sections 1(d) & (e) – Attachment 3).

List of Sources Consulted

Internet Sources:

Government Information & Reports

Immigration & Refugee Board of Canada <http://www.irb-cisr.gc.ca/>

UK Home Office <http://www.homeoffice.gov.uk/>

US Department of State <http://www.state.gov/>

United Nations (UN)

UN High Commissioner for Refugees (UNHCR) Refworld

<http://www.unhcr.org/cgi-bin/tehis/vtx/refworld/rwmain>

Non-Government Organisations

Human Rights Watch <http://www.hrw.org/>

Amnesty International <http://www.amnesty.org>

Minority Rights Group International <http://www.minorityrights.org/>

International News & Politics

BBC News <http://news.bbc.co.uk>

Region Specific Links

National Coalition Government of the Union of Burma <http://www.ncgub.net/>

Burma Lawyers’ Council <http://www.blc-burma.org/index.html>

Search Engines

Copernic <http://www.copernic.com/>

Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

MRT-RRT Library Catalogue

List of Attachments

1. Human Rights Documentation Unit, National Coalition Government of the Union of Burma 2008, ‘Burma Human Rights Yearbook 2007’, NCGUB website, September <http://www.ncgub.net/BHRY/2007/index.html> - Accessed 18 February 2009.

2. Minority Rights Group International (undated), ‘Myanmar/Burma – Shan’ in ‘World Directory of Minorities and Indigenous Peoples’, Minority Rights Group International

- website <http://www.minorityrights.org/4481/myanmarburma/shan.html> - Accessed 14 May 2009.
3. US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Burma*, February.
 4. Amnesty International 2007, *Myanmar: Eighteen years of persecution*, 24 October <http://www.amnesty.org/en/news-and-updates/feature-stories/myanmar-eighteen-years-persecution-20071024> - Accessed 11 May 2009.
 5. Rigg, J. 2006, 'The forgotten war', *New Statesman*, 14 August. (CISNET Burma CX225268)
 6. Fredholm, M. 1993, 'The Country and the Population' in *Burma: Ethnicity and Insurgency*, Praeger, London. (CISNET Burma CX7259)
 7. US Department of State 1999, *International Religious Freedom Report for 1999 – Burma*, September.
 8. US Department of State 1989, *Country Reports on Human Rights Practices for 1988 – Burma*, February. (MRT-RRT Library)
 9. Human Rights Watch 2002, *Crackdown on Burmese Muslims*, July http://www.hrw.org/legacy/backgrounder/asia/burmese_muslims.pdf - Accessed 12 May 2009.
 10. 'Masses in revolt against stifling authoritarian grip' 1988, *Far Eastern Economic Review*, 25 August. (CISNET Burma CX7353)
 11. Katigbak, J. 1988, 'Army stands aside as political turmoil engulfs Burma', *Reuters News*, 16 September. (FACTIVA)
 12. Amnesty International 1989, *Amnesty International Report 1989 – Burma (Myanma)*. (MRT-RRT Library)
 13. Amnesty International 1988, *Burma: The 18 September 1988 Military Takeover and Its Aftermath*, December, ASA 16/15/88. (MRT-RRT Library)
 14. Win, S. 1988, 'Burma's Military Seizes Power, Protesters Take To Streets', *The Associated Press*, 18 September. (FACTIVA)
 15. US Department of State 2004, *Country Reports on Human Rights Practices for 2003 – Burma*, February.
 16. Government of Myanmar (undated), 'The Code of Criminal Procedure (Chapters XVI – XXX) ', Burma Lawyers' Council website http://www.blc-burma.org/html/Criminal%20Procedure%20Code/cpc_16-30.html - Accessed 13 May 2009.
 17. Amnesty International 2003, *Myanmar: Justice on Trial*, July, ASA 16/019/2003.

18. 'Junta bribed to release prisoners in Kachin State' 2008, *Kachin News Group (KNG) – Burma*, 30 July. (CISNET Burma CX206733)

19. Harden, B. 2007, 'Capitalizing on Burma's autumn of dissent', *The Washington Post*, 4 December. (CISNET Burma CX189428)

20. Hein, N. N. 2002, 'Human trafficking increasing', *Mizzima News Group*, 1 October. (CISNET Burma CX68190)