

Update May 2011:

The thirty-four pro-democracy resistance fighters from Burma have now been released from prison in India. For more details, see our press release here: <http://www.burmacampaign.org.uk/index.php/news-and-reports/news-stories/burma-campaign-uk-welcomes-release-of-34-resistance-fighters/14>

Briefing

Thirty-four pro-democracy resistance fighters from Burma face deportation from India back to Burma, where they would very likely face torture and imprisonment.

The 34 were arrested by the Indian Military on 11th February 1998, on Landfall Island in the Andaman Archipelago, a series of islands which are part of India.

The group are members of two pro-democracy ethnic political parties in Burma which have armed wings. Most were members of the National United Party of Arakan (NUPA), and the rest were members of the Karen National Union (KNU).

The Indian Military presented the arrests, codenamed 'Operation Leech', as a successful operation against Burmese insurgents who were gunrunning and trying to use the Indian island illegally as a base of operations. However, it soon became clear that the truth was much more complicated, and that the Indian Intelligence services had been working with the group, and arranged for them to go to the Island. One agent appeared to be acting on his own initiative, luring them into a trap.

Following the pro-democracy uprising in 1988, India had been sympathetic to Burma's democracy



Thirty-four pro-democracy resistance fighters from Burma facing deportation from India back to Burma, where they would be at serious risk of torture and imprisonment.

movement, although this policy was later to change. Indian intelligence agencies and the military had also been working with and assisting some of the armed ethnic groups operating close to the India Burma border. This included assistance to NUPA in return for information about Chinese naval activity off the Arakan Coast, and on rebel groups fighting the Indian government in the north-east of India.

Given this history, political leaders of NUPA were not initially suspicious when, in 1997, Lieutenant-Colonel Biswajit Singh Grewal from Indian Military Intelligence approached them with the possibility of their using one of the Andaman Islands as a base for their soldiers. Burma was surrounded by countries which backed the dictatorship to various degrees, rather than supporting the democracy movement. They saw the opportunity to have a base in a neighbouring country, in the same way as Nelson Mandela's ANC had been given sanctuary by countries bordering South Africa, as one which had to be seized.

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NUPA had built strong ties with the KNU, and many of its soldiers were based in KNU controlled areas of Karen Sate. They were natural allies to work with on the operation.

During the months of preparation for the operation, Lt-Col Grewal visited NUPA in their offices in Bangkok, and NUPA provided almost \$50,000 in loans and gifts, which Lt-Col Grewal claimed were temporary loans for making arrangements. 42 Arakanese and Karen soldiers were selected to be the first to establish a base on Landfall Island. Some of the 42 had taken part in the democracy uprising in 1988. Many were not told the full details of their mission until they were already on speedboats heading for the island. Unknown to them, as they headed toward the island, Thai police raided the NUPA office in Bangkok, confiscating all documents and photographs involving the operation, and any reference to Lt-Col Grewal.

A day after arriving at the island the 42 were asked to lay out their weapons on the beach for inspection by senior Indian military officers who would arrive by helicopter. Five of their leaders were asked to accompany Lt-Col Grewal into the jungle to meet them. They were never seen again, and are believed to have been executed. As soon as the five were out of sight, the remaining 37 resistance fighters were stripped, blindfolded and bound by Indian soldiers, and taken to their naval vessels. They were told they had been arrested for smuggling. They were taken to another island, and on arrival were taken to a three storey building. Another of their leaders, Captain Myint Shwe, was not seen arriving with them, and is believed to have also been killed on the island.



Arakanese leaders Bo Saw Tun (left) and Khaing Razar (right) who are believed to have been killed by Indian authorities on Landfall Island.

The Indian Military, in a First Information Report issued on 18th February 1998, stated that 'Hard intelligence was received that a consignment of arms, ammunition and equipment was being brought by some foreign nationals....to subsequently tranship them illegally to terrorist militant outfits in north eastern states of India...' It went on to state that: 'The foreign nationals tried to escape into the adjoining sea while opening fire with their weapons on our troops. Our troops immediately responded in self defence and fatally injured six of them whilst in the water. They were seen disappearing in the sea and are presumed dead.'

The Indian Military promoted the arrests in Indian media as a major success, but it would be more than six years before formal charges were even filed against the resistance fighters.

They were taken to the Andaman Island of Port Blair, arriving on 24th March 1998. They spent the next 8 years at Port Blair without even being brought to trial. During this time two of the 36 resistance fighters escaped, and have not been heard of since. It is not known if their escape was successful or if they were killed in the attempt.

It was not until December 2004 that charges were even filed against the remaining 34. The trial did not begin until the 34 took legal action in the Supreme Court to get the case transferred to the Sessions Court in Kolkata. The trial finally began in January 2007.

Time and again the trial was delayed by the prosecution, claiming witnesses were not available and more time was needed. By 2010 there still appeared to be no prospect of the trial ending. Indian prosecution witnesses from the military failed to appear in court to give evidence, leading to further delays. And even though it looked likely that they would eventually win the case, even when they were acquitted, it was likely that the prosecution would appeal, meaning they could face many more years in jail.

Finally, in desperation, the 34 agreed to a plea bargain, but refused to plead guilty. Original charges of gun-running and waging war against India were dropped. The judge ordered the 34 to pay a fine of

6,000 Indian rupees each, and to serve a three year prison sentence (which they had already served while waiting for the trial, and during the trial). Lt-Col Grewal never gave evidence. He left the army soon after the arrests, and is now believed to live in Burma.

Although the fine has been paid and the prison sentence has been served, the 34 still remain in jail. As foreigners without passports or visas, the Indian authorities will not release them. India has not given them asylum, and instead says it is up to the United Nations High Commission for Refugees (UNHCR) to give them refugee status. But so far the UNHCR has only given them 'under consideration' status.

The UNHCR conducted interviews with the 34 between 5th and 25th January 2011, but no decision has been announced.

The 34 are now in danger of being deported back to Burma by the Indian government. Already one order has been made for their deportation, which was later cancelled. If they were to be deported back to Burma, there is no doubt that they would face arrest, torture and continued imprisonment.

Even if they are given refugee status by the UNHCR, the Indian government has said that they cannot stay in India. However, no third country has agreed to give sanctuary to the 34.

It is now 13 years since the 34 were arrested, and they remain in jail despite having committed no crime. During this time they have faced living in poor prison conditions, with constant uncertainty. They fear continued imprisonment in India, and possible torture and imprisonment in Burma. Their leaders were tricked by an Indian intelligence official, and then executed. Many of the 34 now suffer from

What should happen now?

- The UNHCR should immediately recognise the 34 as qualifying as refugees under the 1951 Refugee Convention. The 34 clearly qualify as refugees under this Convention.
- As India is not a signatory to the Convention, and is currently stating that the 34 will not be allowed to stay in India, the UNHCR should seek a third country for the 34 to be resettled to.

You can write to the UNHCR at:

António Guterres
United Nations High Commissioner for Refugees
Case Postale 2500
CH-1211 Genève 2 Dépôt
Switzerland

- The Indian government should release the 34 from jail immediately, and guarantee that it will not deport the 34 to Burma. India should reconsider its refusal to allow the 34 to remain in India.

You can write to the Indian Home Affairs Minister at:

Palaniappan Chidambaram
Minister for Home Affairs
Ministry of Home Affairs
North Block, Central Secretariat
New Delhi - 110 001
India

The 34 resistance fighters are:

Soe Naing

Thein Oung Kyaw

Aung Naing Win

Khin Mg Kyi

Khain Soe Lin

Min Thar Tun

Ray Thark

Hay Li

Pho Cho

Kak Htit

Sa Toe Toe

Chan Chit

Thein Kyaw Aung

Chan Du

Khaing Shwe Lin

Soe Soe

Khain San Thein

Maung Nyo Sein

Myo Mrat

Lu Lu

Saw Bo

San Lwin

Yar Aye Thar

Dynyalunn

Zaw Lin

Moe Min Tun

Tun Yin

Khaing Hla

Khaing Thar Mra

Aung Zar Min

Maung Khin Aye

Dah Aye

Shwe La

Maung Naing

With thanks to Aung Marm Oo of the All Arakan Students' and Youths' Congress for assistance in preparing this briefing.

For more information:

Rogue Agent, by Nandita Haskar, Penguin India 2009

www.mizzima.com

www.aasyc.org



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www.burmacampaign.org.uk info@burmacampaign.org.uk tel: 020 7324 4710



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