



Assistance Association for Political Prisoners (Burma)

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1. Executive Summary

The Assistance Association for Political Prisoners (Burma) otherwise known as AAPP provides information on Burma/Myanmar's lack of compliance with human rights laws regarding political prisoners. This includes torture, the right to life, liberty and security of person, legal reform, restrictions on activists and the right to health and an adequate standard of living.

2. Section B – Normative and Institutional Framework

At the time of writing the political prisoner number in Burma/Myanmar has reached 176, with a further 292 individuals awaiting trial.¹ The increase in political prisoners numbers since the end of 2013 reflect the continuing oppression regarding freedom of expression, association and assembly; the violation of the right to life and dignity and freedom from torture. The first few months of 2015 have already seen a marked increase in the political prisoner number, with increasingly violent crackdowns being carried out on student demonstrations, garment worker protests and land rights cases such as the notorious Letpadaung copper mine project. An estimated 127 people were arrested in brutal fashion during the crackdown on the student protests.

The Universal Declaration of Human Rights (UDHR) states the protections that member states of the United Nations (UN) must give to their citizens. The UDHR articulates some provisions, which are staples of international law, for example Article 5 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'² These provisions are non-negotiable yet are too often disregarded in Burma/Myanmar. Torture is prohibited at the international level yet the Burma/Myanmar Government is yet to fulfill their commitment to sign the United Nations Convention against Torture (UNCAT).³ At the domestic level torture is outlawed -Articles 330/331of the Penal Code state that 'voluntarily causing grievous hurt to extort a confession is prohibited.'⁴ By ratifying the UNCAT, states are obliged to take legislative, administrative and judicial measures to avoid torture being practiced and to ensure it is a crime under their respective laws. States are also obliged to educate anyone involved in the interrogation, treatment or detention of individuals and are further expected to investigate

¹For regularly updated political prisoner information please see <http://www.aappb.org>

²UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III). Available at: http://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf [accessed 15 January 2015]

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⁴Myanmar Penal Code (1860) Sections 330 & 331. Available at www.burmalibrary.org. [accessed 10 March 2015]

any alleged practice of torture and to take necessary measures to make those responsible accountable for their actions.⁵

The Penal Code is still widely applied to imprison protesters and activists, while new laws have been introduced in the four years that further restrict peaceful protest and freedom of speech. The primary example is the Peaceful Assembly and Peaceful Procession Act, enacted in December 2011. This law has repeatedly been used to imprison peaceful protesters and little has been done to amend it. The changes made in June 2014 are ineffectual cosmetic changes that do nothing to alter the use of this law to prevent peaceful protest.

3. Section C – Promotion and Protection of Human Rights on the Ground

-Torture

Torture is endemic throughout Burma/Myanmar's prisons, detention centers and interrogation centers. It is also a central component of the systematic abuse and intimidation used in Burma/Myanmar. Recent studies conducted inside Burma have revealed the extent of that torture, with an overwhelming majority of former political prisoners giving accounts of the torture they received during detention. Beatings, rolling an iron rod down the shins, being blindfolded and electric shocks were but of a few of the many types of torture they received. The degree of torture will vary between prisoners with some receiving minor injuries in comparison to others who may be severely injured and left in critical condition and died as a result of the torture inflicted upon them.⁶ The forms of torture used range from psychological torture; deprivation of sleep, food and water to stress positions, water torture and violent physical assault; however the torture is systematic and methodological, often used in order to extract false confessions. In 2012 a farmer was arrested and detained in a Burma/Myanmar Army detention facility. Not only was he arbitrarily detained and denied permission to communicate with anyone outside of the facility he was extensively tortured. It has been established that physically he endured scolding hot knife blades to the face; beatings with bamboo; being stabbed in the thigh; bamboo rollers to the back of the thighs; kicks to the head,

⁵UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.refworld.org/docid/3ae6b3a94.html>

⁶ AAPP-FPPS Documentation Project Interim Report, February 2015, available from: <http://aappb.org/2015/02/assistance-association-for-political-prisoners-burma-and-former-political-prisoners-society-fpps-documentation-project-interim-report-february-2015/>

face and chest; having his chest, stomach and thighs carved with knives and burnings with cigarettes. Further to this, he was kept in solitary confinement; threatened with death and forced to dig his own grave all which amount to psychological torture. Victims of torture often suffer from Post-Traumatic Stress Disorder (PTSD) but do not receive any sort of redress or help from the government.

The death of civilians in custody due to the brutal physical abuse they receive shows the disgraceful lack of regard for the rights of the person in detention. Burma/Myanmar's Penal Code as discussed previously protects people from torture in detention, and yet some have died as a result of the unacceptable abuse inflicted upon them. The case of a land rights activist in Pyay Township in April 2013 showed how he had been tortured during detention and died as a result of his injuries. Subsequent attempts to investigate his case had gone unheeded, despite his body showing clear signs of excessive physical abuse, and no signs that he had died from alcohol abuse as the police report stating.⁷ There is no protection from torture for people in detention while the Government of Burma/Myanmar allows this to continue. They are not upholding their own laws, as well as falling way short of international standards on the rights of the detainee. In addition courts, medical staff and police officers are all implicit in the permitting and covering up of the torture used in detention. A man who died in detention following brutal torture in 2012 was said by police to have died of a heart attack, a post mortem corroborated by a medical professional.⁸ The officers concerned with this death were demoted or transferred, hardly a credible punishment when their actions have caused the death of a man in their custody. The family of this man is still seeking independent investigation and a second credible medical examination. No recourse exists for the families and friends of those who have died, and they are met with little to no assistance in trying to have the death investigated.

AAPP calls on the Government of Burma/Myanmar to:

Immediately honor their commitment to ratify the United Nations Convention against Torture.

Prohibit the use of torture unconditionally especially as a means of interrogation.

Prohibit confessions gained through torture being used in a court of law.

⁷AHRC Urgent Appeals, 10 July 2013 Available at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-098-2013/?searchterm=at>. [accessed 10 March 2015]

⁸AHRC Urgent Appeals, 17 March 2014. Available at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-010-2014/?searchterm=>. [accessed 10 March 2015]

Provide a system that allows prisoners to report torture and implement a process for redressing this.

-The Right to Life, Liberty and Security of Person

Extrajudicial killings, torture, arbitrary detention and death or illness due to inhumane prison conditions are examples of these deprivations of human rights. There is little to no accountability for these crimes and government forces abuse their power as authority figures without consequence. Individuals are arrested, interrogated and detained without a warrant or court order. A female activist was arrested and incarcerated for kidnapping in September 2014 under Articles 364/368 of the Penal Code regardless of the lack of evidence of her involvement in the alleged kidnapping.⁹The recent extrajudicial killing of a freelance reporter who was shot while being arbitrarily detained by the Burma/Myanmar Army in October 2014, demonstrates how the killing of innocent civilians is still very much perpetrated in Burma/Myanmar. He was not returned to his family, government forces buried his body before any investigation could take place. The Myanmar National Human Rights Commission (MNHRC), created in 2011, investigated the case but the findings did little to call to account those responsible, and were largely disregarded by the family of the deceased. Independent and impartial investigation into the killing of civilians must be allowed to take place, without interference or influence from the army or the government.

AAPP calls on the Government of Burma/Myanmar to:

Allow independent investigations into any cases of human rights violations and impartially prosecute anyone responsible for death, torture or any inhumane or degrading treatment or punishment.

Ensure those detained are done so legally and not arbitrarily.

Immediately release all prisoners being arbitrarily detained.

⁹ AAPP Monthly Chronology, September 2014. Available at:
<<http://aappb.org/wp-content/uploads/2014/10/September-2014-Chronology.pdf>>

-Restrictions on Activists¹⁰

The month of March 2015 is a worrying indictment of the current attitude towards political and human right activists, freedom of expression and the right to peaceful protest. The National Education Law protests standoff in Letpadan ended in the arrest of approximately 127 people and the use of excessive force by police. Whilst some have now been released there are still 101 protesters detained in connection with the education demonstrations.¹¹ In addition garment factory workers protests seeking improved working conditions and a simple raise in their wages were, in the same week, resulting in a violent crackdown and subsequent arrests. Both protests have resulted in disproportionately violent crackdowns by security forces, and saw the abuse and detention of protesters, supporters, journalists and ambulance workers. AAPP has received first hand information that some student detainees have been brutally tortured during their detention as well as being held incommunicado without access to family, friends or legal counsel.

The laws in place to imprison activists also reflect the current attitude towards peaceful demonstrators. Of the current 176 political prisoners, 35 are sentenced under Section 18 of the Peaceful Assembly and Peaceful Procession Act. Section 18 states that ‘If there is evidence that a person is guilty of conducting a peaceful assembly or a peaceful procession, he or she must receive a maximum sentence of one year imprisonment or a maximum fine of thirty thousand Kyat or both.’ On June 24 2014, this was changed to a sentence of maximum three months imprisonment. The provisions contained within this law are aimed at restricting the right to peaceful protest and fall far short of international standards.¹² It is crucial to mention here that in section 1(b, c) it clearly states that both peaceful assemblies and peaceful processions include the gathering of more than one person. Several solo protesters have however been detained under this law.¹³ There are still a further 156 awaiting trial under Section 18, as well as 15 people awaiting trial under Section 19 of the Peaceful Assembly and Peaceful Procession Act.

38 political prisoners are currently detained under Section 505(b) of the Penal Code. Section 505 (b) is a vaguely worded article and infringes on a wide range of activities human rights

¹⁰Human Rights Watch, *Burma: Peaceful Assembly Law Fails to End Repression*, 26 January 2015. Available from: <http://www.hrw.org/news/2015/01/26/burma-peaceful-assembly-law-fails-end-repression> [accessed 15 February 2015]

¹¹ AAPP Political Prisoner Data. Available at: <http://aappb.org/2015/03/remaining-in-prison-at-lpt-10-mar-2015-case>

¹² Article 19, *Myanmar Amended Right to Peaceful Assembly and Peaceful Procession Law*, August 2014. Available at <http://www.article19.org/data/files/medialibrary/37666/14-08-01-LA-myanmar-assembly.pdf>. [accessed September 2014]

¹³ The Peaceful Assembly and Peaceful Procession Act (2011) Section 18, available at www.burmalibrary.org

defenders could potentially engage in, as almost anything could be said to fit the description of what is prohibited. 27 people are awaiting trial for 505 (b) charges.¹⁴

Section 401(1) of the Code of Criminal Procedure is a common clause under which amnesties and releases are carried out. However this conditional release means that if an activist is released from prison before his/her sentence is complete, the President can revoke the amnesty and call them back to finish their sentence.¹⁵ They are still living with fear and intimidation of any re-arrests that are possible as a result of a 401 conditional release.

AAPP Calls on the Government of Burma/Myanmar to:

Immediately amend The Peaceful Assembly and Peaceful Procession Act to bring it in line with international standards on freedom of expression.

Properly define Section 505(b) of the Penal Code.

Ensure when an amnesty is granted, activists are from then on absolutely free from further restrictions or oppression and cannot under any circumstance be called back to serve the rest of their sentence.

Review outdated oppressive laws routinely used to stifle and arrest political activists.

Provide clear information as to the arrests and charges of political activists.

Unconditionally release all political prisoners and end ongoing trials of political detainees.

Ensure access to legal representation for all detainees.

-The Right to Health and an Adequate Standard of Living

In 2011 following former UN Special Rapporteur Tomas Ojea Quintana's meeting with political prisoners in Insein Prison, he found that transfers to remote facilities without prior familial notification were a common occurrence. Some smaller prisons are commonly in malarial areas

¹⁴ Section 505 (b) states 'Whoever makes, publishes or circulates any statement, rumor or report with intent to cause, or which is likely to cause fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the state or against the public tranquillity shall be punished with imprisonment which may extend to two years or with fine or with both.'

¹⁵ The Code of Criminal Procedure (1898) Section 401(1)

and medicine and healthcare is not readily available.¹⁶ The conditions within the prisons themselves still need to be addressed, as the previous UPR submission recommended. Prisoners are packed together within small cells due to overcrowding. Containers have been reported to overflow with human waste and during the rainy season some cells leak leaving the affected area a breeding ground for mosquito larvae and bacteria. Hypertension, diabetes, asthma, coronary heart disease and stomach problems are common ailments and the conditions in prisons exacerbate these conditions. Malaria, cholera, tuberculosis (TB) and HIV/AIDS are very common conditions to contract in Burmese prisons and dysentery is considered a norm. Speaking with mental health professionals is rarely allowed.¹⁷ Family members are often expected to provide medicines to the prisoners; however with the high rate of prisoner's transfers, family members cannot often make visitations.

AAPP Calls on the Government of Burma/Myanmar to:

Ensure adequate physical and psychological healthcare for all political prisoners during incarceration and on release.

Ensure prison facilities are kept to a certain standard to ensure they are not contributing to the poor record of health that prisoners face.

End the practices that prevent prisoners from receiving family and friends supporting during their imprisonment.

Allow independent international monitoring of prison conditions and implement changes suggested by these bodies.

4. Section E-Recommendations from Previous UPR Submission 2011

The following discusses the two recommendations that have begun to be implemented, as well as the failure to implement the majority of recommendations made in the 2011 UPR Submission.

¹⁶ Quintana, T, 2012. *Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, Human Rights Council

¹⁷ Maron, D, 2012. *From Bad to Worse: Health in Burma/Myanmar's Prisons*, *Physicians for Human Rights*. Available at: <http://physiciansforhumanrights.org/blog/from-bad-to-worse-health-in-Burma/Myanmars-prisons.html> [accessed 15 January 2015]

- Allow an independent investigation into the deaths of those in custody; it should include relatives in the process, make the results public and hold accountable anyone found responsible for deaths, torture, mistreatment and medical negligence, and prosecute them, including anyone who failed to prevent these crimes.

The advent of the MNHRC was supposed to allow for independent transparent investigation into accusations of human rights violations in Burma/Myanmar. Whilst this body has taken on the cases of extrajudicial killings and human rights abuses, and made the findings published, those findings have done little to bring accountability to the perpetrators.¹⁸ His family, who believed his body showed signs of torture that contradicted the official position of the Burma/Myanmar Army, deemed the findings in the case of the freelance journalist insufficient. Whilst a body such as the MNHRC is important, the operating of such a group must be free of intimidation or influence from outside factors. Only by encouraging and protecting independent investigation can accountability be brought to perpetrators and gross human rights violations be brought to an end.

- Allow individual monitoring, by the ICRC, of the detainees and prisoners to prevent extrajudicial executions; enforced disappearances of people under arrest; torture; mistreatment; and to safeguard the physical and psychological health of prisoners.

Despite the ICRC being permitted a degree of access to some prisons in Burma/Myanmar, their ability to effect real change and improve conditions is severely limited. There are still huge concerns over the poor conditions in Burma/Myanmar's prison. The ICRC is unable to publish the findings of their visits in the public forum, but they have made improvements to the water and sanitation hygiene of some of the larger jails. The conditions in Burma/Myanmar's prison still require vast improvements to bring them to an acceptable standard with current conditions said to be tantamount to a form of torture and the recommendations for Burma/Myanmar's prisons from 2011 have largely remained unfulfilled.

¹⁸ Burma Partnership, *All the Presidents Men*, 25 September 2014. Available at: <http://www.burmapartnership.org/wp-content/uploads/2014/09/All-the-Presidents-Men1.pdf>. [accessed February 15 2015]

5. Conclusion

The Government of Burma/Myanmar has largely failed to implement the recommendations made in the previous submission in 2011. Whilst some legal reforms have been made, political prisoner arrests have continued. Whilst the number of political prisoners had decreased dramatically since 2011, the steady rise in this figure since the end of 2013 demonstrates the restrictions and attitude that still remain towards freedom of expression and assembly. The dramatic rise to the current figure at the time of writing does little to encourage the idea that this government is working towards a free and open society. The recommendations made in this paper reflect many of the requirements that existed in 2011, and still do to this day. It is essential that real change is made and not the disingenuous reforms that have been seen in the past four years. In particular the Government of Burma/Myanmar needs to honor their commitments such as the signing of the UNCAT. They must also implement existing laws within Burma/Myanmar law that enshrine the protection of basic human rights and protect from torture and abuse. The Government of Burma/Myanmar must protect the rights of their citizens afforded to them under their own laws, and bring those laws used to arrests and imprison activists in line with international standards.