

JOINT SUBMISSION

TO

THE 2015 WORKING GROUP OF THE HUMAN RIGHTS COUNCIL

FROM

THE BURMA/MYANMAR UPR FORUM

Arakan Student and Youth Congress; Arakan Women Peace Network, United; Assistance Association for Political Prisoners-Burma (AAPP-B); Burma Partnership (BP); Chin Human Rights Organization; Color Rainbow; Development Force; Equality Myanmar (EQMM); Gender Development Institute; Human Rights Defender and Promoter-HRDP; Humanity Institute; Kachin Legal Aid Network; Kachin Peace Network, Kachin Women Peace Network, Karen Human Rights Group, Myanmar LGBT Network; Magwe Social Initiative Group; Network for Human Rights Documentation-Burma (ND-Burma); Myanmar Teacher Union Federation; Pyi Gyi Khin (PGK); Seagull; Shwe Danu; Shwe Min Tha Foundation; SIT Myanmar; Smile Education and Development Foundation; Spirit in Education Movement; Tavoy Women Union, Tavoy Youth Organization; United ACT, YMCA (Mandalay).

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SUBMISSIONS OF THE BURMA/MYANMAR UPR FORUM

EXECUTIVE SUMMARY

1. This joint stakeholder submission is by the Burma/Myanmar UPR Forum, which was convened after workshops in Yangon and Mandalay, the two main cities of Burma/Myanmar. The aforementioned organizations expressed an interest to contribute and endorse this report. This report includes issues that are not covered by separate submissions as those separate submissions are able to go into much greater depth. For example, there is no section in this submission on women's rights as a partner organization are submitting their own report on this issue. Thus this report seeks to fill the gap of the most important human rights issues not covered by other actors of Burma/Myanmar's civil society. The Forum's member organizations contributed information and edits to the draft that the core writing team that consisted of Burma Partnership and Equality Myanmar produced.
2. Of the many significant human rights issues that currently exist in Burma/Myanmar, the Forum has identified eight key issues which it thinks must be addressed by the Government of Burma/Myanmar if there is any realistic chance for Burma/Myanmar to transition to a representative democracy in the foreseeable future.
3. Despite Government rhetoric and public promisesⁱ it is evident that little or nothing has been accomplished in the last four years: there has been no changes or improvement in the Judiciary or rule of law; constitutional change has not occurred; no core human rights conventions have been ratified or acceded to; human rights violations continue unabated; business interests are favored over local interests and negotiations for a cease fire are deadlocked.
4. The Forum strongly urges the Human Rights Council and the United Nations to take all necessary steps to compel the Government to make these essential changes as soon as possible.

2.0 THE JUDICIAL SYSTEM

5. The Constitution of the Republic of the Union of Myanmar Act 2008 (the Constitution) established the Supreme Court as the highest court in Burma/Myanmar with jurisdiction over all matters except for constitutional matters (Constitutional Tribunal Court) and military matters (Courts-Martial).ⁱⁱ The Chief Justice of the Supreme Court is nominated by the President for approval by the Pyidaungsu Hluttaw (Parliament) and these two officials nominate the other Justices. Each nomination must be approved by Parliament which must approve the nomination unless the nominee does not clearly meet the qualifications set out in the Constitution.ⁱⁱⁱ Similar procedures are followed with respect to the appointment of judges to the high courts and lower courts.^{iv} Notwithstanding the provisions in the Constitution to the effect that the Chief Justice and other Justices must be free of party politics, under the current legislative framework the judiciary is not independent of the executive branch and that in reality there is no separation of powers that is a necessary and vital part of any democracy. The Special Rapporteur in his last report to the HRC in 2014 concluded that there has been little progress in making or undertaking fundamental reforms to the judicial system, including the judiciary.^v In fact the Special Rapporteur concluded in a previous report that the judiciary was under the direct control of the Government and the military^{vi}.
6. The Forum notes that Burma/Myanmar supported certain recommendations set out in the 2011 Working Group Report A/HRC/17/9 (2011 WG Report), namely: (1) to ensure the independence and impartiality of the judiciary and guarantee due process of law; and (2) to improve its domestic legislation and judicial system to be in line with international standards and obligations including stronger training for its military and law enforcement officers.^{vii}
7. Corruption and bribery are also major issues facing Burma/Myanmar. Lawyers and parties to an action are now accustomed to the necessity of paying bribes to all levels of court officials including judges. For example in 2013 there was the case that came to the public's attention where an individual involved in a property lawsuit in Yangon was approached by the wife of the judge hearing the case with a "request" for payment of US\$150,000.^{viii} Unfortunately very few cases of corruption in the judicial system have come to the public's attention or have been prosecuted. One senior Burma/Myanmar lawyer has quoted "justice goes to the highest bidder"^{ix}. In an attempt to address this problem the Government set up a Judicial Fairness Committee three years ago. The Committee has received over 10,000 complaints since its creation, yet there has been no effective action to resolve the complaints. Subsequently in 2013 the Government ratified the Convention against Corruption and established a 15 member Anti-Corruption Commission. It is too soon to measure the effectiveness and impact of this commission on the judicial system. Apart from

this step little has been done or accomplished by the Government to reform and modernize the judicial system in Burma/Myanmar.

8. There is an inherent unfairness that currently exists in Burma/Myanmar's judicial system. There are many examples of this, but one extreme case involves Htin Kyaw, a human rights defender (HRD) who leads the community-based organization Movement for Democracy Current Force. Since June 4, 2014 he had received at least 14 sentences for human right activities from different courts under various laws totaling 13 years 4 months.^x
9. In any democratic system there is a vital need for a strong independent bar to be able to maintain a check and balance on the Government when human rights are threatened. In Burma/Myanmar there is no strong independent national bar council or association at the present time which is in a position to effectively challenge the Government when necessary. Under the Bar Council Act of 1929 as amended in 1989 the Bar Council now consists of 11 members, six of whom are nominated by the Supreme Court, and the remaining five being government officials with the chair being the Attorney-General.^{xi} Therefore the Myanmar Bar Council is indirectly controlled by the Government and is not an independent body.
10. In summary (1) the judiciary is not independent and there is no separation of powers between the executive and the judiciary; (2) there is rampant corruption in the court system; (3) there inherent unfairness in judicial decisions; and (4) there is no independent national bar council or association. The Forum submits that an independent transparent uncorrupt judiciary and bar is an essential component to creating a viable working democracy.

RECOMMENDATIONS TO THE GOVERNMENT OF BURMA/MYANMAR:

- amend the Constitution (including the amending formula) to ensure that the judiciary is truly independent of the executive and the legislature;
- ensure that the Anti-corruption Commission is independent and impartial with the necessary funds to effectively carry out its mandate to investigate corruption in the courts;
- enhance the quality of legal education in all aspects of the judicial system including law schools, lawyers and the judiciary in Burma/Myanmar; and
- amend applicable legislation pertaining to the National Bar Council to enhance and safeguard the independence of the legal community.

3.0 CONSTITUTION AND LAW REFORM

11. Burma/Myanmar accepted a number of recommendations on law and constitutional reform, including reforming laws that allow forced labor, marital rape, and those that restrict fundamental freedoms, as well as incorporating international human rights standards into law, yet these have not been implemented. Furthermore, one of the most significant obstacles to establishing democracy, the 2008 Constitution, has not been amended.
12. In response to growing pressure from both local civil society organizations and the international community, the Government in mid-2013 appointed a 109 member Constitutional Review Committee for the Reform of the Constitution. By the end of 2013 the Committee had received over 300,000 suggested changes to the Constitution and submitted its report in January 2014. The most significant of these are: (1) to remove or amend the de facto veto power of the military set out in Sec. 436 (keeping in mind the military is entitled to 25% of the seats in the Parliament); (2) to remove the impunity provisions set out in Sec. 445; and (3) to amend the qualifications for the offices of President and Vice-Presidents set out in Sec. 59 and in particular Sec. 59(f). The Government's response was to set up yet another committee to supposedly oversee the implementation of the amendments to the 2008 Constitution. Unfortunately the Government has decided to postpone any possible action on amending the Constitution until after the 2015 elections.
13. Furthermore there are many examples of local laws which do not confirm to the Constitution or international laws. More extreme examples are as follows: (1) the Myanmar Penal Code of 1860 is outdated and does not meet the national, economic and social needs of society; (2) the minimum age of a child for criminal responsibility is 7 years of age^{xii}; (3) it is not a criminal act in Burma/Myanmar for a man to rape his wife unless she is under 14 years of age; (4) under 1951 Child Labor Act a child from 13 to 15 is able to work if he/she has doctors certificate that the child is in good health which is not in compliance with the Convention on the Rights of the Child (CRC). There are many other examples of domestic laws which need to be repealed or amended to bring such laws in line with the Constitution and international laws.

RECOMMENDATIONS TO THE GOVERNMENT OF BURMA/MYANMAR:

- amend the Constitution as soon as practicable to effect necessary changes to make Myanmar a transparent accountable and fully democratic society;
- make the appropriate changes to the Constitution and other applicable legislation to ensure that the military becomes fully accountable to civil authority;

- amend or repeal domestic legislation to conform to the Constitution and international laws (including CEDAW, CRC and CRPD); and
- amend Section 445 of the Constitution so as to end impunity for government officials including the requirement to investigate, prosecute and punish those responsible^{xiii}

4.0 FREEDOM OF ASSOCIATION/EXPRESSION/POLITICAL RIGHTS

14. Burma/Myanmar accepted the 2011 working group recommendation to “take steps to review domestic laws with a view to guaranteeing the right to freedom of expression, association and assembly, including assuring a free and independent media.” President Thein Sein’s government has introduced a raft of new legislation, which, ostensibly, allows fundamental freedoms of association, expression and assembly. Yet not only are these laws fundamentally flawed, they are being used to stifle civil society and deny the very fundamental freedoms that they are supposed to enshrine.
15. In the initial years of the transition process 2011 and 2012, Burma/Myanmar saw a loosening of restrictions on fundamental freedoms, as well as high profile releases of political prisoners. However as the 2015 election draws near, more and more people are being charged or imprisoned under politically motivated charges, while the media is being muzzled after a positive spell of opening up.
16. One particular law that is being used to imprison activists is the 2011 Peaceful Assembly and Peaceful Procession Act.^{xiv} This law seemingly allows peaceful demonstrations to take place. Yet it contains stipulations such as the need to apply for permission to assemble, later amended to ‘consent’ from the authorities. This consent must be applied for five days in advance, while details of the time, place, and slogans, and purpose of the assembly, as well as names and addresses of the organizers provided. Those who contravene the legislation are criminally liable under Section 18.
17. The Government also enacted the Association Registration Law in 2014,^{xv} permitting civil society organizations to work officially in Burma/Myanmar. However, the legislation contains clauses that are still disconcertingly ambiguous (e.g. references to organizations which threaten “national security” or being subject to charges under “existing law”) or which have the potential to restrict the freedom of associations or civil society organizations to operate (e.g. imposing limitations on the geographical scope of their activities).^{xvi}

18. Not only are new laws such as the above being used to squeeze civil society space and place restrictions on fundamental freedoms, but draconian legislation^{xvii} such as the 1908 Unlawful Association Law and the Myanmar Penal Code of 1861 are still being utilized to arrest politicians and activists.^{xviii}
19. A worrying trend is the intimidation of journalists who are covering events the authorities do not want to be in the public domain. A particularly brutal example is the case of Ko Par Gyi, a journalist who in 2014 was taken into custody, tortured and shot dead by the Myanmar Army.^{xix} His body was buried without being returned to his family. Par Gyi's death has caused widespread outcry amongst civil society in Burma/Myanmar, with his appalling death signaling a stark reminder of the dangers civil right activists, journalists, and human rights defenders face.
20. Other high profile cases include the five journalists of Unity Journal, who face seven years imprisonment including hard labor, for reporting on a chemical weapons factory.^{xx}

RECOMMENDATIONS TO THE GOVERNMENT OF BURMA/MYANMAR:

- immediately cease the silencing of political activists, peaceful protesters and HRDs by use of the criminal justice system or by threats, harassment and intimidation;
- ensure that all Burma/Myanmar people's fundamental rights to assembly, association and expression are respected and protected at all times;
- release all prisoners of conscience unconditionally and resolve all disputes in relation thereto with an independent review panel composed of competent domestic and international experts; and
- undertake full, transparent and independent investigations into all allegations of human rights as protected by international human rights law and the Constitution.

5.0 MYANMAR NATIONAL HUMAN RIGHTS COMMISSION

21. On 5 September 2011, Burma announced that it had established the Myanmar National Human Rights Commission (MNHRC) charged with promoting and safeguarding the fundamental rights of citizens in accordance with the 2008 Constitution.^{xxi}

22. Initially its 15 (now 11) members were all appointed by President Thein Sein himself with no consultation with civil society or other stakeholders. Subsequently, in March 2014 the Myanmar National Human Rights Commission Law was passed giving the organization an extended mandate.
23. Concerns about the new law include the fact that the President has a major influence on the MNHRC. According to the law, the President establishes a selection board (which consists of very little civil society representation) which chooses candidates for a MNHRC membership shortlist from which the President will choose the members. Dismissal procedures are vague leaving the members without sufficient provisions to protect their independence. Currently MNHRC cannot conduct investigations into cases where a court case is pending. While the law grants MNHRC powers to compel the production of documents and witnesses, it also uses such vague wording that it could allow a broad range of denial of this production essential for investigations. Furthermore, financial support of MNHRC is allocated from the Government's budget rather than from Parliament's budget. Thus the enabling law and MNHRC fall far short of the principles of independence as stated in the Paris Principles.^{xxii}
24. It is important to note that MNHRC has yet to successfully investigate and provide substantive recommendations for any human rights complaint made to it. It fails to meet the key tests of independence, effectiveness, and legitimacy.^{xxiii} A prime example is related to its mandate in conflict zones. The military commits the most serious, widespread and systematic human rights abuses. It remains a completely unreformed institution. Cases of torture, sexual abuse and rape, extra-judicial killings among many violations continue to be documented on a regular basis. Yet Win Mra, chairman of MNHRC, clearly stated in an interview that the MNHRC would not investigate abuses in ethnic conflict areas.^{xxiv}
25. In another display of not just ineptitude, but of actions that actually exacerbate the human rights situation in Arakan State involve the Duu Chee Yar Tan massacre. Evidence obtained by the UN as well as information from Medicines Sans Frontieres clearly indicated that the police were involved in the massacre of around 40 Rohingya Muslims in Duu Chee Yar Tan village.^{xxv} Yet in their investigation report, MNHRC proceeded to not only absolve the police of any wrongdoing but used the term 'Bengali' to describe the Rohingya, thus furthering the discourse that they do not belong in the country as they are illegal immigrants and denying them the right to self-identify.

RECOMMENDATIONS TO THE GOVERNMENT OF BURMA/MYANMAR:

- amend the enabling law to ensure that: (1) the selection committee consists of more civil society representatives (both registered and unregistered), including those from independent academia; (2) at least a third of its members are women and from religious and ethnic minorities; (3) an independent mechanism is established for dismissal procedures to ensure that retaliation for investigation into sensitive issues is avoided; (4) MNHRC is able to investigate cases that are under court proceedings; and (5) funding (including decisions as to salaries, benefits and expenses) for MNHRC comes from Parliament as opposed to the President’s Office as it is now;
- allow MNHRC unrestricted access to active conflict and ceasefire areas with guarantees of protection;
- Regularly and systematically consult with civil society organizations, both registered and non-registered, including human rights groups, ethnic groups and women’s groups; and
- speak out publicly on cases of arrest and intimidation of HRDs.

6.0 ARMED CONFLICT

26. Since Burma/Myanmar’s independence in 1948, armed conflict has plagued the country as decades long civil war has been fought between various ethnic armed groups (EAGs) and government forces. The government accepted the recommendation in 2011 to “solve long-standing conflicts between the Government and ethnic groups in a peaceful manner” yet conflict continues, as do human rights violations associated with this conflict.
27. Since March 2011, the Government has reached preliminary bilateral cease fire agreements with 14 EAGs but not with the Kachin Independence Army (KIA) or the Ta’ang National Liberation Army (TNLA) with which regular clashes continue.^{xxvi} Notwithstanding six rounds of meetings between the Government and the Nationwide Ceasefire Coordination Team for a nation-wide cease fire agreement, the negotiation process appears to be deadlocked, having not been able to achieve a level of trust to reach a genuine political solution.^{xxvii} Burma/Myanmar Army offensives thus continue in non-ceasefire areas, such as the use of helicopter gunships and airstrikes on KIA positions, but also in ceasefire areas, especially in northern Shan State. This situation reached crisis point in February and March 2015, where major fighting took place between the Burma/Myanmar Army and the ethnic Kokang, Myanmar National Democratic Alliance Army, devastating the Kokang region, displacing tens of thousands. As a result of the fighting more than 100,000 people^{xxviii} have become internally displaced in Kachin and Northern Shan States

alone although at the time of writing this number is increasing daily due to the ongoing Kokang conflict.^{xxix}

28. Despite the Government's rhetoric on peace and democracy, there are still major concerns for the human rights situation in Burma/Myanmar. The ongoing civil war in ethnic areas has directly resulted in civilian killings, land confiscation, forced labor, child soldiers, forced relocation, torture and extra-judicial killings.^{xxx} Those areas covered by ceasefires have seen increased investment and extractive projects that are accompanied by human rights abuses, as well as repression of activists and local residents who oppose the projects. Network for Human Rights Documentation-Burma (ND-Burma) documented 253 human rights violations across Burma/Myanmar in 2013 and 265 in 2014^{xxxi}.
29. One example is the murder of a young Kachin girl (Ja Seng Ing). An independent committee determined that the military were at fault. The father of the deceased girl wrote a letter of complaint to the President and to the MNHRC. As a result the father was accused and recently convicted of "making false" allegations against the military.^{xxxii}
30. A further example is the murder of unarmed villagers in Sai Lane village in Northern Shan State on July 20, 2014 by government forces which was documented by the Palaung Women's Organization. In the evening approximately 70 soldiers from Infantry Battalion (IB) 71 arrived at the village, allegedly under the belief that members of the TNLA were hiding in the village. They shot and wounded three innocent unarmed villagers and then arbitrarily detained other villagers. They also arrested and tortured U Aung Aye, the village head. Initially the military would not allow anyone out of the village to go to the hospital.^{xxxiii} Another example occurred in Karen State where the military continues their policy of shoot-on-sight by killing and injuring local villagers. Furthermore in Karen State villagers reported that government troops had planted landmines contaminating 37 plantations, thereby depriving them of their livelihood.^{xxxiv} The atrocities continue in 2015 and the Burma/Myanmar Army has yet to commit to either a code of conduct, nor political dialogue that is key to resolving long-standing ethnic conflict, as the Burma/Myanmar Government stated it would do in 2011.

RECOMMENDATIONS TO THE GOVERNMENT OF BURMA/MYANMAR:

- to reach a genuine comprehensive final ceasefire agreement between all parties including a military code of conduct, the protection of human rights and international independent monitoring mechanism;

- to include CSOs in the discussions about past and present human right violations (HRVs) and to fully consult with victims and communities on the impact of such violations and possible remedies;
- to undertake independent and impartial investigations into HRVs (including prosecuting the violators) and to refrain from using the judicial system as a means to intimidate victims and witnesses;
- to ensure as part of the final peace accord that the Government and all other armed parties will not have a right of impunity but will be subject to accountability for HRVs; and
- to sign and ratify the Anti-Personnel Mine Ban Treaty (Ottawa Treaty) which outlaws anti-personal mines.

7.0 BUSINESS AND HUMAN RIGHTS

31. Burma/Myanmar's economy has gone through major changes since 2011 as it seeks to liberalize, become globally integrated, and attract foreign direct investment. However, irresponsible private investment, especially in Burma/Myanmar's ethnic areas, is creating new patterns of human rights violations while exacerbating old ones. Such issues include; increased militarization to protect projects near conflict zones, rampant land confiscation is underway in ceasefire areas, and exploitation of natural resources with little benefit to the local community has resulted in a widening of inequality and the mass economic disenfranchisement of Burma/Myanmar's poor. This contradicts the recommendations accepted by Burma/Myanmar in 2011, to "Continue the efforts to combat poverty and ensure sustainable development, and fully implement projected reform programmes and the roadmap for political transformation," and to "Continue implementing the Government's reform policy and action plans to address socio-economic inequality in order to achieve further progress to improve the situation of human rights in the country especially in an effort to achieve most of the targets of the MDGs, including poverty reduction, the control of HIV and the fight against human trafficking." The issue of land confiscation is cross-cutting, pervasive, and applies to nearly all major investments in Burma/Myanmar since 2011. The 'Draft Land Use Policy' written by the Government and released in late 2014 ostensibly seeks to address these issues yet it primarily serves to benefit big business at the expense of smallholder farmers^{xxxv}.

Special Economic Zones (SEZs)

32. There are three special economic zones planned for Myanmar; **Thilawa** (heavily backed by Japanese investment as well as domestic companies), **Dawei** (which will be Asia's largest industrial zone, and includes a road link to Bangkok), and **Kyaukphyu** (a planned 120 sqkm SEZ in Arakan state that is also the start of the

Shwe Oil and Gas Pipeline). All three are in early stages of development but human rights violations are already occurring, including villagers being pressured and coerced into signing agreements and accepting compensation which has been allocated on an arbitrary and inconsistent basis, inadequate assessments of the environmental and social impacts of these projects (for example, in Dawei SEZ, the Environmental Impact Assessment was commissioned two years after construction began) while the Principle of Free Prior and Informed Consent (FPIC) has been ignored; most villagers were not informed of the projects before they began.^{xxxvi}

Mining

33. The most high-profile example of mining projects causing human rights violations is the Letpadaung Copper Mine, in Sagaing Region that has resulted in land confiscations (7,800 acres confiscated), environmental degradation, violent crackdowns on protesters by authorities^{xxxvii} (including use of phosphorus grenades and water cannons and the shooting of local villager, Daw Khin Win, by police), and dozens of arrests of demonstrators, many of whom have subsequently been charged and imprisoned under various laws, most notably the Peaceful Assembly and Peaceful Procession Law and the Penal Code.^{xxxviii} The local community does not support this project as their livelihoods are being destroyed and compensation offered has been inadequate.

Oil and Gas Extraction

34. The recently completed Shwe Gas Pipeline transports oil and gas across Burma/Myanmar into China. The oil and gas pipelines and the offshore gas fields involve Chinese, Korean, and Indian companies in partnership with the Burma/Myanmar military owned, Myanmar Oil and Gas Enterprise. The military was contracted to secure the pipeline that runs around 800km across the country, resulting in significant militarization^{xxxix} and accordingly more clashes with EAGs. Construction of the pipeline has resulted in environmental damage that has consequently had negative impacts on people's livelihoods, especially in agriculture and fishing.^{xl}

Hydropower

35. There are six planned dam sites on the Salween River that runs through Burma/Myanmar's Shan, Karen, Karenni and Mon areas, with Thai, Chinese, and domestic companies invested in their construction. Over 90% of electricity generated from these hydropower dams will be exported out of Burma/Myanmar. Many of the dam sites, forcibly confiscated from local communities, are situated in conflict areas or areas where ceasefires are preliminary and fragile. This is exacerbated by increased militarization in these areas resulting in increased conflict with local ethnic armed groups.^{xli}

Labor Rights

36. Although two new laws, the Labor Organization Law and the Labor Dispute Settlement Law, have been promulgated, workers, particular in Yangon's industrial zones where many garment factories are located, face difficulties when organizing for better working conditions. Reports released by labor activists^{xlii} as well as by a parliamentary commission^{xliii} find that workers are grossly underpaid, and a complex system of overtime pay forces them to work an average 12 hour day, 6 days per week. Typically they work in hot, overcrowded, unsafe factories and live in factory provided hostels that are squalid.

RECOMMENDATIONS TO THE GOVERNMENT OF BURMA/MYANMAR:

- consult widely and inclusively with affected communities, implement the principle of FPIC and provide adequate compensation for those who are relocated;
- enact legislation that protects the rights of workers and ensures good faith bargaining practices in labor disputes; and
- refrain from natural resource extraction in ethnic areas until a comprehensive peace settlement is reached that addresses natural resource management.

8.0 ARBITRARY DETENTION

37. The arrests of political activists and human rights defenders (HRDs) in Burma/Myanmar have continued throughout 2011-2014. Despite a number of political prisoner releases throughout this period, this supposed change of attitude from the Government has not seen a genuinely increased working space for civil society and HRDs. Arbitrary detention and imprisonment has continued unabated, with a steady increase throughout 2014.
38. Political prisoner figures have, since the end of 2013 when 30 remained, gradually risen again to 160, with a further 203 awaiting trial at the end of 2014. Many cases have been brought without due process and without respect for rule of law. The issues surrounding arbitrary detention further stem from a lack of an independent judiciary and no real protection of basic human rights as enshrined in international law. In addition, their basic rights while in detention are often denied to them.
39. The laws used to arrests activists in Myanmar frequently violate Articles 19, 20 and 21 of the Universal Declaration of Human Rights and do not provide a legitimate legal basis for their detention. Laws such as The Peaceful Assembly and Peaceful Procession Act and Section 505 (b) of the Penal Code are among the most common

used to detain activists. Both are widely considered by human rights groups to violate these Articles. In addition bail is rarely set or granted, and when it has, been set an extortionately high amount when compared with the alleged offence.

RECOMMENDATIONS TO THE GOVERNMENT OF BURMA/MYANMAR:

- reform laws used to arrest and detain political activists and HRDs to develop a genuine rule of law
- honor commitments to UDHR Articles and ensure rights under detention are respected; and
- end the common practice of arbitrarily arresting citizens for exercising their human rights to peaceful protests and freedom of assembly and expression.

9.0 TORTURE AND EXTRA-JUDICIAL KILLINGS

40. Torture and extrajudicial killings continue to take place against citizens of Burma/Myanmar committed by the authorities, within a culture of complete impunity. Until the perpetrators of these crimes are brought to justice and the culture of impunity is changed, Burma/Myanmar's civilians remain at risk. Citizens in areas of ethnic conflict or those being held in detention are especially vulnerable to abuse at the hands of government forces.
41. The numerous accounts of torture from across Burma/Myanmar demonstrate how torture is endemic, systematic and part of a pervasive policy of restricting and abusing the basic rights of people in Burma/Myanmar. For example, in May 2013, the Burma/Myanmar police arrested and allegedly tortured Nan Win, in an attempt to coerce him into admitting to a crime involving stolen gold, which he refused to do. The police then arrested Than Than Aye, his wife who was pregnant at the time, accusing her of involvement. They interrogated her in various locations and reportedly tortured her. On June 17 they took her on a boat to search for the hidden gold. According to a witness, the police officer in charge, Naing Aung Kyaw, repeatedly beat her during the search. At around 7pm, Than Than Aye supposedly jumped from the boat and drowned. Following her death, her husband was acquitted of the alleged crime due to a lack of evidence. An investigation was conducted; Naing Aung Kyaw was suspended and given a one-year custodial sentence, whilst his subordinates were demoted by one rank.^{xliv}
42. A further example is that of Aung Tin Win, who was accused and arrested in June 2014 for involvement in a Karen National Union raid of the Burma/Myanmar Military

in Sis Kwin Village in Pegu. During interrogation he was beaten and subject to various brutal forms of mental and physical torture, including being blindfolded and hooded; made to stand in painful stress positions; burnt with a lit cigarette; suspended upside down from the ceiling; subject to high voltage current; having an iron pipe rolled down his shins; and being forced to listen to the voices of relatives from an adjacent room in order to extract a confession.^{xlv}

43. The cases of Par Gyi, Than Than Aye and Aung Tin Win are just a few of many that demonstrate how government forces utilize tactics that are both brutal and systematic to oppress citizens, whilst not being held accountable. The signing of the UN Convention Against Torture (CAT) is a necessary step towards removing the institutional barriers to the cessation of such human rights abuses in Burma/Myanmar. However, despite the government's verbal commitment in January 2014 to sign CAT at the 2014 UN General Assembly,^{xlvi} at the time of writing this commitment remains unfulfilled.

RECOMMENDATIONS TO THE GOVERNMENT OF BURMA/MYANMAR:

- honor commitments to national reconciliation and end on-going extrajudicial killings, torture and other physical, mental and sexual abuses against citizens;
- fulfil the commitment to sign CAT;
- implement and support independent investigations into accounts of killings and torture and ensure respect for rule of law;
- end the culture of impunity and ensure government forces are held accountable for their actions in an independent and transparent legal system; and
- provide reparations to families of victims and ensure they are applied retroactively into past killings.

ⁱ 'Burma to free all political prisoners, says Thein Sein,' BBC, 15 July 2013, <http://www.bbc.com/news/world-asia-23318296>; 11 promises made by President Thein Sein to President Obama in 2012, some of which have been only partially achieved (see United to End Genocide Nov. 5, 2014 edition): see Recommendations supported by the Government of Myanmar set out in the 2011 Working Group Report to the Human Rights Council (A/HRC/17/9)

ⁱⁱ Sections 293-295 of the 2008 Constitution, http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf

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- ⁱⁱⁱ Sections 299-301 of the 2008 Constitution, http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf
- ^{iv} Sections 308-310 of the 2008 Constitution, http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf
- ^v See Report of Special Rapporteur to Human Rights Council A/HRC/25/64 dated April 2, 2014 paras.53 and 54 for a summary of recommendations in this area.
- ^{vi} See Report of Special Rapporteur to Human Rights Council A/63/341 para. 103.
- ^{vii} Refer to Sections 104.9, 104.10, 104.37 and 104.38 of the 2011 WG Report.
- ^{viii} ‘Myanmar’s opening up hasn’t loosened graft in courts Thomas Fuller,’ New York Times, 24 October, 2014, <http://www.nytimes.com/2014/10/25/world/asia/myanmars-opening-up-hasnt-loosened-graft-in-courts.html>
- ^{ix} Ibid New York Times 24, October, 2014.
- ^x Human Rights Defenders Forum, HRD cases, <https://hrdefendersforum.wordpress.com/hrd-cases/>.
- ^{xi} ‘An Introduction to the Law and Judicial System of Myanmar,’ by Nang Yin Kham, Myanmar Law Working Papers Series Working Paper 001, Centre for Asian Legal Studies, Faculty of Law, National University of Singapore, March 2014. http://law.nus.edu.sg/pdfs/cals/working_papers/Myanmar/MWPS001.pdf
- ^{xii} Sec. 28(a) the Child Act 1993, available online at <http://displacementsolutions.org/wp-content/uploads/THE-CHILD-LAW-1993.pdf>.
- ^{xiii} See a number of recommendations (not accepted by the Myanmar Government) adopted by the HRC set out in the 2011 WG Report – Sections 107.42 to 107.46.
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