

Preliminary Report of The Ad hoc Commission on Depayin Massacre (Burma) July 4, 2003



The Burma Lawyer's Council decided to devote the space in this journal to the Preliminary Report of the Ad Hoc Commission Depayin Massacre July 4, 2003. This decision was taken so that the report of the Ad Hoc Commission previously could be given the wider international exposure that it deserves.

It arose out of the tragic events of the 30th May 2003 when Burma's Noble Peace Laureate and National League for Democracy (NLD), much loved and internationally acclaimed Daw Aung San Suu Kyi, along with her Deputy U Tin U and other NLD colleagues, were ambushed, attacked and abducted. These are strong words, but the words that most accurately convey to the reader the seriousness of what happened that night in Depayin. As the report makes clear there had been no credible explanation so far from Burma's military government, otherwise known as the State Peace and Development Council presided over by General Than Shwe, or equally an investigation opened that has credibility.

In limited and challenging circumstances the Ad Hoc Commission was an attempt to provide an institutional response to an 'incident' where lives were needlessly lost, innocent persons injured, with many being arbitrarily detained and a military junta that continues to stonewall.

This report, sui generis, part politics and part law, cannot be anything else given the state of the nation that is Burma under the military rule of dictator General Than Shwe. Law is but a general desire not a reality and the rule of law exists only in SPDC propaganda. The lawyers that comprise two of the four members of the Ad Hoc Commission as members of the Burma Lawyer's Council are committed to the rule of law and have maintained this principle throughout their investigations and deliberations. This rationale we hope informs the reader as to why we support the Ad Hoc Commission and the inclusion of its preliminary report in our journal.

***Executive Council
Burma Lawyer's Council***

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Ad hoc Commission on Depayin Massacre

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- (1) National Coalition Government of the Union of Burma (NCGUB) for providing information and cooperation.
- (2) Member Organizations of the National Council of the Union of Burma for their cooperation.
- (3) Political Defiance Committee (PDC) of the National Council of the Union of Burma (NCUB) for providing information and the photographs of the Depayin victims.
- (4) Network for Democracy and development (NDD) for providing information and the photographs of the Depayin victims.
- (5) Assistance Association for Political Prisoners-Burma (AAPP-Burma) for providing information to compile the list of victims of the Depayin Massacre.

The Commission also expresses its profound appreciation to the anonymous individuals inside Burma, who bravely helped provide the precious information and assisted to bring the eyewitnesses out of the country.

Formation of the Ad hoc Commission on Depayin Massacre (Burma)

The National Council of the Union of Burma and the Burma Lawyers' Council have formed a commission on June 25, 2003 to jointly deal with the alleged assassination attempt against the leaders of the National League for Democracy, including Nobel Peace Laureate Daw Aung San Suu Kyi, with the following programmes:

The Title of the Commission

The commission will be entitled as the Ad hoc Commission on Depayin Massacre (Burma).

Aim

- (1) To find out the truth on the Depayin Massacre;
- (2) To facilitate the struggle of people, based on legal affairs, both inside Burma and in the international community, in connection with the Depayin Massacre;

Programme Objectives

- (1) To exert efforts to lodge a complaint with the International Criminal Court (ICC) in the event that it has jurisdiction over the Depayin Massacre case;
- (2) To lodge a complaint or complaints with other courts in the international community including the International Criminal Tribunal to be possibly established by the United Nations Security Council if the first objective is not possible;
- (3) To cooperate with the people inside Burma and the international community for the emergence of an official independent investigation commission in order to find out the truth on Depayin Massacre;

Formation of the Commission

The following representatives from the National Council of the Union of Burma and the Burma Lawyers' Council constitute the commission on Depayin Massacre (Burma):

Burma Lawyers' Council

1. **U Aung Htoo**
2. **U Min Lwin Oo**

National Council of the Union of Burma

1. **U Khin Kyaw Han**
2. **U Kyaw Kyaw**

On behalf of the commission, U Aung Htoo, as Coordinator, takes responsibility to communicate with the outside world.

Accountability

The Commission is to refer matters of general policy, not affecting its legal independence, to the National Council of the Union of Burma.

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Explanatory Statement of the Ad hoc Commission on Depayin Massacre

Depayin Tragedy

The alleged assassination attempt against the leaders of the National League for Democracy, including Nobel Peace Laureate Daw Aung San Suu Kyi and U Tin Oo, the deputy Chairman of the NLD, took place near Kyi village, Depayin township, Shwe Bo District, Sagaing Division, Burma at about 8:00 p.m on May 30, 2003. In spite of the fact that Daw Aung San Suu Kyi and U Tin Oo escaped from that killing field, it is confirmed that some leaders of the NLD, its many members and sympathizers were massacred. Many supporters were injured; and, unaccountable numbers of people disappeared.

In every society, whenever such a heinous crime that impacts on several thousand people occurs, the respective governments, in cooperation with the international community or by themselves, usually investigate the incidents. They seek to find out the perpetrators and their mastermind, and take proper legal action. However, as of now no national or international commission has been formed to thoroughly investigate the incident on what actually happened in Depayin township, Burma.

Ad hoc Commission on Depayin Massacre

The National Council of the Union of Burma (NCUB) is the largest democratic opposition comprising the Members of Parliament Union (MPU), National Democratic Front (NDF), Democratic Alliance of Burma (DAB) and the National League for Democracy (Liberated Area). The Burma Lawyers' Council (BLC) is an independent lawyers' organization attempting to promote and assist in educating, implementing, restoring and improving basic human rights, democratic rights, and the rule of law in Burma. The NCUB and the BLC have jointly formed an Ad hoc commission on Depayin Massacre (Burma) with equal representatives from the two organizations in order to find out the truth.

In undertaking its functions, the commission consults with a wide range of persons and parties, including NCUB members and BLC members, who have a particular interest in this issue and seeks their concurrence for decisions on general matters of policy. However, the commission is an independent body in investigating the event and attempting to take a legal and other necessary actions against the perpetrators, who committed the crime against the victims in Depayin incident. All members of the commission are persons who have been struggling for achieving human rights and democracy in Burma for years. Nevertheless, in dealing with the Depayin issue, the commission attempts not to be biased, accepts primary and secondary evidence, and analyzes the incident based on available accurate factors without subjectivism. It also rejects the hear-say statements of the witnesses. It exerts efforts to explore the truth only on what actually happened. It tries not to simply accuse the ruling military junta as perpetrators. It is also ready to accept all reasonable information and explanations made by concerned parties, including the State Peace and Development Council (SPDC), in that incident.

Analysis of the Military Junta's Press Conference With this background situation, the commission scrutinized all statements of the ruling junta. Without investigating the incident thoroughly and effectively, the SPDC military junta simply blamed the NLD for such an atrocious incident through its press conference held at 4:00 p.m., May 31, 2003.

In that formal press conference, the SPDC officials publicized the following factors:

1. the members of the NLD including U Tin Oo led by Daw Aung San Suu Kyi incited unrest with the crowd of people, and due to their acts, there occurred a traffic jam and instability.
2. at the scene of crime where the incident occurred, people numbering about 5,000 were present to demonstrate against Daw Aung San Suu Kyi;
3. clashes broke out between those in support of Daw Aung San Suu Kyi and those opposed to her;
4. as a result of the clashes, four people died, 50 injured, eight vehicles and nine motorcycles were destroyed.
5. the injured were admitted to hospital for medical treatment.

Those aforementioned factors can be analyzed as follows:

1. Daw Aung San Suu Kyi and U Tin Oo never made a trip to that Depayin town before; incitement has never been made with the local Depayin people; and, instability never occurred in Depayin as a consequence of the action of Daw Aung San Suu Kyi and U Tin Oo before this incident happened. As such, it is quite evident that **the accusation of the SPDC against the NLD leaders is groundless** in regard to this Depayin incident.
2. The presence of 5,000 people in that killing field, claimed by the junta, manifestly indicates that **the incident was a premeditated attack**. There is Kyi Ywa that is the closest village, to the disputed area. Kyi Ywa is a very small village. The number of dwellings there is not more than a hundred houses. As such, the number of the whole population in the village may be less than 500. The number of villagers, from Kyi village, and the NLD members and supporters from the convoy of Daw Aung San Suu Kyi were not more than 1,000 in total. The villagers from Kyi village were supporters of Daw Aung San Suu Kyi. There was no eyewitness that the local people from Depayin town publicly came to that disputed area by any transportation or on foot on May 29 or 30. If so, where do 5,000 criminals who attacked the motorcade of Daw Aung San Suu Kyi and the villagers from Kyi village come from? Some reliable information indicates that they might be the members from the Union Solidarity and Development Association (USDA) and other criminals collected and taken by the authorities from other parts of Burma to that killing field areas.

According to the statement of the eyewitnesses, when the incident commenced, the first large group of attackers came from the cars that closely chased the motorcade of Daw Aung San Suu Kyi at the rear. The total number of those were over one thousand. Out of 5,000 claimed by the junta, the remaining numbers were positioned clandestinely beside the road in the two designated killing fields by the authorities.

¹The military junta mentioned 5,000 number of people in its press conference held on May 31, 2003.

"A large group of people numbering about 5,000 were waiting for Daw Suu Kyi to stage a demonstration against her at a place two miles from the entrance to Dapayin."

Both groups of attackers were holding iron spikes, iron bars, bamboo and wooden clubs and other sharp weapons. They appeared only after the two monks halted the motorcade of Daw Aung San Suu Kyi. Then, they inhumanely and brutally attacked the unarmed NLD members and its supporters.

3. In the event that the clashes between the two opposing groups with bare hands happened incidentally, it might not be atrocious and serious. It is evident that the NLD members and its supporters including the villagers from Kyi village held no weapons. To the contrary, 5,000 people claimed by the junta had already held the lethal weapons before the incident happened. The following factors indicate that it was not an event happened incidentally but

it was a well-organized crime:

- (a) Before the motorcade of Daw Aung San Suu Kyi arrived, the local authorities threatened the people living in the villages between Sai Pyin village and Depayin town not to welcome Daw Aung San Suu Kyi and not to appear if something happened;
 - (b) Out of 5,000 that the junta referred, over one thousand criminals, who took the cars at the rear of Daw Aung San Suu Kyi's motorcade, firstly created problem with the villagers from Kyi village and started their premeditated attack at the first killing field.
 - (c) The remaining thousands of criminals awaiting beside the road under cover of night joined the first attackers and attacked the motorcade of Daw Aung San Suu Kyi from the left site of the first killing field.
 - (d) Other criminals numbering more than 1,000 were already positioned at the second killing field. It was on the way to Depayin town, about five minutes drive from the first killing field. They attacked the cars of NLD members and supporters from Daw Aung San Suu Kyi's motorcade, that escaped from the first killing field without any reason.
4. According to the reliable information, the villagers from the villages around that killing field areas took care of the wounded victims. Then, the victims left those villages and were hiding from the danger of being arrested and executed by the junta. The junta arrested the wounded victims who did not escape from the killing field and placed them in the prisons such as Shwe Bo, Kathar, Khamti and others. As such, the list of the injured persons issued by the junta is not complete. There have been no public hospitals in the whole country, that the family members and relatives can meet the wounded victims from Depayin incident. The issue is that if the junta allows the wounded victims to meet the public including international Media, the wounded victims might articulate their experiences in the incident. It clearly indicates that **the junta is attempting to cover the truth.**

The Function of Ad hoc Commission

The commission has limited function as it cannot visit the scene of crime, examine all relevant witnesses, local people and responsible authorities. However, it examined four eye-witnesses, who personally experienced the incident and closely watched it. The political defiance committee of the NCUB collected these eyewitnesses from inside Burma, who escaped from the close watch of the military authorities. Out of four, two of them themselves were beaten. Without partiality, the commission scrutinized the statements of these four witnesses. In addition, the commission also received statements of two other eyewitnesses who were present at the scene of crime from reliable sources. The commission accepted the statements of those six eye witnesses as major primary evidence. It also transcribed the

radio interviews made by the NLD leaders and MP elects, who personally met the eyewitnesses, and by the relatives who attempted to meet the victims. The commission accepted them as secondary evidence.

The Accountability of the SPDC Military Junta

With reference to such a limited number of eyewitnesses and other available evidence, it will be quite premature for the commission to make an accurate conclusion on who committed such a heinous crime. However, oral statements and other documentary evidence consistently indicates as follows:

1. it was not clashes between the two opposing groups fighting each other accidentally; it might be an assassination attempt systematically plotted by the authorities;
2. SPDC military junta is directly accountable to the Depayin massacre for the following reasons apart from the factors mentioned above and below:
 - (a) 16 hours after the incident, the junta held the press conference blaming the NLD for the incident; for such a huge terrible incident, no competent investigation commission can conclude anything, without examining the reasonable numbers of eyewitnesses, within a very short time; as such, it indicates that the junta has already made up a story since before the incident actually happened;
 - (b) in the event that the clashes happened between the two opposing groups, the junta taking responsibility itself as government, requires to take an effective action against the perpetrators from both sites; in practice, it has not been the case; the junta detains the NLD leaders, members and its supporters; however, no suspected accused from other site has been arrested;
 - (c) to the contrary, in the aftermath of the Depayin event, the junta continued to arrest the wounded victims from the NLD;
 - (d) the junta has not yet allowed Daw Aung San Suu Kyi and other NLD leaders to publicize their experiences in the incident through the international Media and other news agencies;
 - (e) the commission has received unconfirmed information that the authorities are attempting to forcefully relocate the villages that are situated around the two killing fields; if it is the case, the intention might be to expel the eyewitnesses from those villages in order to cover the truth.
3. the actual perpetrators might be the members of Union Solidarity and Development Association (USDA) and other criminals whose actions were directly controlled by the authorities;
4. the eye-witnesses closely watched the incidents from different areas within the crowd of thousands of people in a large killing field, that might be about one hundred yards long; each stated that more than 20 victims were massacred even in the presence of each of them in different areas of the major scene of crime; one witness stated that after running away from the first killing field for about ten minutes, he watched the killers dragged about twenty dead bodies to bury in a stream; in addition, some were killed in the second killing field; and there may also be other number of victims who were also assassinated nearby areas around those two killing fields; in brief, the number of the dead is still unknown;
5. on May 31, the junta announced that 50 people were injured; however, on June 4, it stated differently that 48 people got wounded; only when the independent investigation commission and international Media meets all injured people and ask, the

accurate number might be available; unfortunately, the junta has not yet provided that opportunity in order to cover the truth; the accurate number of the wounded victims is also unknown; the other victims who got wounded and who were not detained by the junta might be hiding somewhere in various parts of Burma due to their well-founded fear of being persecuted;

6. there was no sign of hostility of the local people living in Kyi Village, against the leaders of the NLD, led by Daw Aung San Suu Kyi;

The military junta publicized that the Depayin event occurred accidentally between the two opposing groups fighting each other, resulting in the death and injuries of NLD members, its supporters and other people who were present at the scene of the clashes.

Unless the Depayin incident is relevant to the junta, it should release all NLD leaders, its supporters and other people; publicly guarantee not to detain any affected person in the incident; allow the international media to meet all injured persons and other eyewitnesses; and facilitate all victims, who still survive, to formally lodge complaints in an independent investigation commission.

The junta is accountable to thoroughly prove that it did not mastermind the Depayin massacre. The question is how it is going to be proved. Junta's press conference alone should not be sufficient. U Khin Maung Win, Deputy Minister for Foreign Affairs, briefed the Heads of Missions of embassies in Burma on the latest situation and development concerning the 30th May incident. He reported that an official inquest is being conducted by the Police Department under the Ministry of Home Affairs. The principle on the 'Neutrality of Police' has disappeared in Burma since 1962 military coup. The senior officials of the police are the former army personnel. The junta strictly controls the whole function of police including appointment, dismissal, promotion, transfer and etc. As such, the investigation of the police on Depayin Massacre might be mockery as the people and the international community suspect that the junta, the master of police, masterminded the incident.

Recommendation for the Emergence of an Official Investigation Commission on Depayin Massacre

In order to seek the truth, it is required to form an independent commission. In order to establish the independence and neutrality of such a commission, the representatives either from NLD or SPDC military junta may not be included. It may comprise respected patriotic politicians, the academicians such as retired professors, legal practitioners from independent legal profession, religious leaders, the leaders who participated in the struggle of Burma's independence and the representatives from the international community including those from ASEAN and UN. The qualification for the selection of commission members should be made public. The UN may supervise the process for the formation of that commission and its function. To ensure an effective investigation, such a commission shall enjoy the authority to take testimony or a statement from any witness, regardless of political, military or governmental positions, under the principle of the rule of law within a reasonable time limit. The function of such an important commission should be transparent and accountable to the United Nations as well as the whole people in Burma.

Our Ad hoc Commission on Depayin Massacre (Burma) will be ready to facilitate the function of such an official commission, that might emerge in near future and that will be duly recognized by the national, regional and international community. However, in the event that the military junta denies the formation of such an independent commission and does

not expedite its operation, the Ad hoc commission on Depayin Massacre (Burma) will continue to exist, find out the truth and attempt to take proper legal and other actions against the perpetrators.

Denial of Impunity on Depayin Massacre

Taking actions on Depayin massacre is not a question of *politics* but the issue of *seeking justice* for the victims and *prevention of repeated crimes* in future. The release of Daw Aung San Suu Kyi, NLD members and other people, who were detained by the junta, should be welcome. Nevertheless, it should not be the final resolution in dealing with the Depayin massacre. ***It cannot be a trade-off.*** Depayin massacre issue has become a major concern not only for Daw Aung San Suu Kyi and the NLD members but also for the whole society.

Daw Aung San Suu Kyi, a noble peace laureate, is a charismatic leader in the world. Unless an effective legal action be taken against the perpetrators for the well-publicized crime against the noble peace laureate or, in the presence of the noble peace laureate, the perpetrators will enjoy impunity forever. In addition, they will dare to commit more serious crimes against the innocent ordinary citizens repeatedly in the near future.

Dealing with the Previous Human Rights Violation Is the Foundation for a Genuine National Reconciliation?

The international community, as well as the people in Burma, has an expectation to transform the society from the rule of dictatorship to democracy, within the framework of the national reconciliation by peaceful means. However, without developing a proper mechanism to deal with the previous human rights violations in a transition process, a genuine national reconciliation might not be achieved. In a democratic transition from the rule of the dictators to democracy in Burma, it is required to seek justice for the victims properly and effectively. From 1962 to the present time, the successive military juntas have committed crimes against humanity several times. In spite of that, no effective action could be taken. The perpetrators have enjoyed impunity endlessly. In the event that the similar situation continues to take place even for Depayin massacre, serious human rights violations in Burma will certainly occur more than before.

Request to the Various Nationalities of Burma and the International Community

The military junta, relying on its military power and reasoning the exercise of sovereignty of a state, might ignore the demand of the international community and its own citizens in order to establish the truth on Depayin massacre. If it is the case, our Ad hoc commission would like to request to the various nationalities of Burma, all national, regional and international organizations working for human rights and democracy in Burma and the international community, to work together to take an effective legal action on the junta, asking the legal intervention of the international community.

The International Criminal Court has already existed since July 1, 2002 and it has jurisdiction to deal with the most heinous crimes when committed in a country after its existence. The Rome Statue of the International Criminal Court enshrines the definition of "Crime Against Humanity" as any of acts - including murder, extermination, enforced disappearance of persons, and others - when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Depayin massacre falls within such scope of the "Crime Against Humanity." It may not be fair if ICC denies the complaints to be possibly lodged by the victims from Depayin Massacre reasoning that it will have jurisdiction only over the countries that formally ratified the Rome Statue. The SPDC military junta in Burma will never ratify the Rome Statue. The junta usually refers to the term "Sovereignty of a State" to be applied as a shield to cover its human rights violations

taking place inside the country and it should be ceased.

The UN Security Council formed the International Criminal Tribunals of Rwanda and Yugoslavia previously. Depayin Massacre might not be a similar serious crime as happened in those two countries. However, it was also such a serious crime committed by thousands of perpetrators. In the event that the UN Security Council is keeping silent and providing impunity to the perpetrators, the more serious crimes, that will threaten regional peace and stability, might occur in Burma.

In order to achieve our objective to establish the truth and take effective legal actions against the perpetrators in Depayin incident, the victims and witnesses themselves are required to be courageous enough. They might come forward before the public, make known the truth, and bring the perpetrators into justice. To this end, our Ad hoc Commission on Depayin Massacre is ready to provide all necessary assistance to the concerned victims and witnesses. We will also seek cooperation with individuals, human rights and democratic organizations, legal institutions and governments from international community as well as from inside Burma.

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Brief Background of Event

After her freedom from 19 months house arrest on May 6, 2002 Daw Aung San Suu Kyi began her organization trips outside of Rangoon. Her release from house arrest was unconditional and as approved by the SPDC she could freely travel throughout the country.

Her first Rangoon precinct trip was to Shwe Pyi Thayar Township NLD head office on 17-5-2002 followed by trips to Daw-bon township NLD head office on 22-5-2002, on 24-5-2002, Kamayut Township NLD head-office, on 13-6-2002, as her fifth trip in Rangoon precinct, she visited Thakayta NLD head office.



Daw Aung San Suu Kyi's car was put off the road by the authority during her trip to Irrawaddy Division in August 1998.

Throughout the trip mentioned, she received overwhelming support from the people.

She later made her upper Burma trips from 20-6-2002 to 29-6-2002 visiting (16) township in Mandalay and Magwe Divisions continued by trips to Mon and Karen States visiting 12 Township from (14-10-2002 to 17-10-2002). She then visited 14 townships in Pegu Division from (13-11-2002 to 27-12-2002), 17 Townships in Shan States from (16-12-2002 to 24-12-2002), and 15 Townships in Arakan States, Magwe Division and Irrawaddy Division from (3-4-2003 to 13-4-2003).

Daw Aung San Suu Kyi had experienced harassment from SPDC since 1996. The USDA had interrupted Daw Aung San Suu Kyi and caused her trouble throughout her journey in many ways.

Such plot against Daw Aung San Suu Kyi had since been arranged in 1996 and was revealed by the SLORC/ SPDC Minister of Railways Transport Ministry and secretary of the USDA U Win Sein.

On 1-11-96 at 14:00 hrs, in the compound of the Le Pyin village primary school which is about 1 mile away from Inn Daw Township of Sagaing Division, the entire village USDA members's proposals submitting ceremony, was held. U Win Sein who participated in the ceremony, delivered a speech to the attending villagers making strong personal attack on Daw Aung San Suu Kyi. Furthermore he stated that the creator of the internal political disturbances, Daw Aung San Suu Kyi, must be eradicated. **"Do you understand what is meant by Eradicated?"**



Daw Aung San Suu Kyi was injured when she was brought by force back to Rangoon from above roadside.

"Eradicated means to kill", and added, "Dare you kill Daw Suu Kyi?". He repeated this 5 or 6 time, but no one answered him. In addressing the people by microphone and raising the question dare you kill Daw Suu Kyi was heard not only by those attending the ceremony but also villagers in the village and by monks in the monastery.

Regarding this matter, NLD chairman U Aung Shwe informed Senior General Than Shwe by letter with letter No: 179/Cee (Nyein)/96 of 20.12.96.

Therefore, it is obvious that since 1996 responsible personnel of USDA have been instigating the assassination of Daw Aung San Suu Kyi and making verbal personal attacks on the General Secretary of the National Language for Democracy. The Depayin incident is indeed a practical move to bring about their intention.

On 9.11.96, Saturday afternoon at about (15:35) hrs, leader of the NLD U Tin Oo, U Kyi Maung and Daw Aung San Suu Kyi left the entrance gate of Kanbawza manor and slowly headed southwards in 3 motor vehicles. Just about (15) feet from the entrance gate, at a bus stand, on the road, and on either side of the road was a group of people estimated to be round about (200). They had with them rocks, iron chains, iron rods that can kill people and attacked the motorcade in the manner of following instruction from someone else. In the presence of the security members and in broad daylight, the attack was carried out like a country in anarchy.

Due to the attack, the back windshield of Daw Aung San Suu Kyi's car was cracked and the car of U Tin Oo and U Kyi Maung, the glasses on both sides of the back doors and the back windshield were totally damaged.



Daw Aung Suu Kyi's car was damaged in (9-11-96) attack by SPDC's thugs in Rangoon.

The second attack had taken place at the intersection of the University avenue road and Than Lwin Road. The time was about (16:45) hrs. At that place were an army major, a police inspector and 10 motor vehicle polices blocking the University Avenue road. The NLD cars in turning towards the Than Lwin Road, two men from near the officers rushed out throwing stones at the leader's cars moved close to the cars and stabbed with daggers. As the cars were moving no one was hurt, but it was a formidable plot. The attackers after committing a brutal and barbarous attack

calmly went back towards the security officers.

On 20-7-98, about (9:10) hrs, Daw Aung San Suu Kyi, and Central Executive Committee member and Chairman of the Irrawaddy Division organization Committee U Hla Pe set out on a trip by motor vehicles to Pantanaw Township, Irrawaddy Division to encourage and console the family of MP Dr. Tin Min Htut who was under detention.

On the way at telegraph post No (106) of Rangoon-Bassein highway near Pandaing village her journey was disrupted by the authorities. At about (11:40) hrs on resuming her journey, she was again stopped at a place about 4 miles from where she was first halted near Anyarsu and Pandaing villages. Round about (14:10) hrs, the authorities brought Dr. Tin Min Htut to meet with Daw Aung San Suu Kyi. With the consent of the authorities Dr. Tin Min Htut

was taken back to Rangoon by Daw Aung San Suu Kyi.

On 24-7-98 at about (09:05) hrs Daw Aung San Suu Kyi, CEC U Hla Pe and party travelled to Bassein by motor vehicles to give moral support to the families of MPs who were detained under the 1961 Restriction of Movement and Probation of Habitual Act. They were halted at the thoroughfare near Pandaing and Anyarsu villages. On 29-7-98 about (21:50) hrs at the place where they were stopped, security members of the authorities by using force mauled her into her car against her will and took her back to her home. Daw Aung San Suu Kyi's car was driven back by a member of the authorities without her permission. The remaining CEC member and 2 NLD staff were treated the same way as Daw Aung San Suu Kyi and were taken back. Again on 12-8-98 Daw Aung San Suu Kyi with U Hla Pe, Central Executive Committee member and the chairman of the Irrawaddy Division Organization Committee, traveled by car peacefully on the public road to Bassein. On nearing Anyarsu-Pandaing villages of Htantabin Township, they were stopped on the way. After (13) days her health deteriorated, the CEC and other NLD members became anxious and on 24-8-98 took her back and arrived in Rangoon about (15:20) hrs.

On 24-8-2000 while Daw Aung San Suu Kyi and party were on their way to Dala Township in two motor vehicles, they were stopped by a group of policeman on the way. After detaining them for 9 days they were forcibly made to return by the authorities, on 1-9-2000. Within a matter of an hour, the NLD Headquarters was raided by the authorities. On 21.9.2000, while Daw Aung San Suu Kyi, and her colleagues were preparing to depart for Mandalay, they were halted by the authorities at the Rangoon Railway Station. After which she was put under house arrest until 6.5.2002.

In 2002 of May 6th, Daw Aung San Suu Kyi was released from house arrest and the SPDC declared that a new chapter had been opened in the history of Burma and every citizen could take part in political activities. And that Daw Aung San Suu Kyi had passed the period of confidence building between the NLD and the SPDC. After receiving her freedom from house arrest and in her travels throughout the country, the support she received from the people was gaining momentum and in the same manner her harassments from the USDA was also rising.



Daw Aung San Suu Kyi's motorcade was blocked by SPDC during her trip to Dala township in August 2001

From 6.5.03, Daw Aung San Suu Kyi and her entourage were on an organizational tour by motor vehicles according to schedule, from Rangoon to Mandalay. And then to Shwe Bo, Khin U, Kaw Lin, Wun Tho, Indaw, Katha, Mohnyin, Mogaung, Pa Kan, Tanaing, Namti, Myitkyina, Waingmaw, Bamaw, Shwe Gu, Momeik, Mogok, Thabeikkyin, Singu, Madaya, Mandalay, Myintmu, Monywa, Butalin, Depaeyin. During the tour, party signboards were put up at one State office and 12 Township offices and were able to form 9 Township youth organizations. While they were travelling on the road from one town to another, USDA member with posters shouted slogans and opposed them.

On 16.5.03 when they were entering Myitkyina Township, about 300 people carrying 2"x 1"

clubs, catapults and short choppers surrounded the motorcade of Daw Aung San Suu kyi and her colleagues with hostility.

The USDA had interrupted Daw Aung San Suu Kyi and caused her trouble throughout her journey in many ways. On 30-5-03 about 7:30 PM at a place two miles from Depayin a little further from Kyi village intersection at Phayarpyet village, a group of ruffians led by the authorities made a violent attach on her motorcade.

The incident had been systematically premeditated by the authorities and carried out by their minions the USDA thugs.

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Oo, presided over formation of Myinmu Township NLD Youths. Then, the convoy left Myinmu for Monywa after 3:00 p.m. Before reaching Chaung U, a group assembled for protest against Daw Suu near Yeposar Village was seen by the security scout car. It tried to turn back so as to inform the convoy about the matter. However, as the crowd prevented it from turning back, the scout car had to go on to Monywa. When the scout car, on reaching Chaung U, related about the incident at Yeposar to a crowd of students and people from Monywa, who had come to welcome Daw Suu, the crowd riding on about 3,000 motorcycles rushed

to Yeposar. As there were about 6,000 supporters, the protesters were not able to do any mischief and Daw Suu and the party was able to reach Monywa safely at 6 p.m.

The town's people of Monywa and the local population warmly welcomed Daw Aung San Suu Kyi and the NLD members. Though the government authorities had cut off power to the whole town, there was a rousing candle-lit welcome by the people, with shouts of "Long live Daw Suu; Long live Ba Ba U Tin Oo!" Daw Aung San Suu Kyi addressed the welcoming crowd in Monywa Town for about 40 minutes. After that, she retired for the night at the house of a former military officer and owner of Sein Hmyar Store of Monywa, U Tin Soe.

On the morning of May 30, Daw Aung San Suu Kyi presided over the installation of signboard and reopening of Monywa Township NLD office, and then the formation of Monywa Township NLD Youths. Though Daw Aung San Suu Kyi and her party members later went to Zawtika monastery of Monywa to pay respect to the abbot, they did not have a chance to do so, as the abbot had been invited away by the Army Northwest Command headquarters. After that, Daw Suu and the party went to Okkan Tawya monastery briefly. At about 10: a.m., departure was made for Butalin Town through the Circular Road of Monywa. When Daw Aung San Suu Kyi and party arrived near Zeedaw Village, military authorities from the Northwest Command headquarters stopped the convoy including cars of the people of Monywa, who came along to send off Daw Suu and party. When Daw Suu and party arrived at Butalin, the ceremonies of installing the signboard and opening of Butalin Township NLD office, and formation of Butalin Township NLD Youths were performed.

After that, the supporters from Monywa who came along with the party returned to Monywa. When they arrived at Zeedaw, which was near the Army Northwest Command headquar-

ters, the police waiting in readiness beat them up and put them under arrest.

At about 4:30 p.m., the entourage left Butalin for Depehyin Town. When it arrived at Saingpyin Village, Daw Aung San Suu Kyi went to the house of U Win Myint Aung, who was an MP-elect and who had been in prison, and gave a word of encouragement to the family members of U Win Myint Aung and NLD members of the village. On the way to Depehyin, as the scout car for our convoy did not return, motorcycle riders were sent to find out about the situation. However, they also did not return.

Then, the entourage continued the journey, and reached Kyi Village at about 7:30 - 8:00 p.m., where the massacre took place. From there, Depayin was only about 2 miles away. At Kyi Village, the villagers and local population came out to welcome Daw Suu and the NLD members. After passing Kyi Village for about 100 yards, the car with registration number Ar/5415 in which Daw Aung San Suu Kyi was riding, was at the forefront of the convoy, and behind that was the car in which U Tun Win (from Zaygyo) and U Khin Maung Thaung were riding. The third car (Hilux model, green color) was that of members of Mandalay Township Youths, who had the duty of providing close security. Behind that was the car of Sagaing Township MP-elect, Dr. Hla Soe Nyunt (Sunny, white color). Behind Dr. Hla Soe Nyunt's car was the car of members of Rangoon Division, NLD Central Youths security detail (Hilux model, white color) and behind the car of the Central Youths was the car of NLD Vice-Chairman U Tin Oo (Town Ace model, micro-bus) and behind U Tin Oo's car were cars of the NLD members, all in a line.

After passing Kyee village for about a hundred yards, by blocking the way in the front, two monks stopped Daw Aung San Suu Kyi's car. When Central Youths security officer Ko Tun Zaw Zaw got off the car and asked about the reason, the 18 two monks said, "We have been waiting for a long time. Ask Daw Aung San Suu Kyi to give a speech." In reply, Ko Tun Zaw Zaw explained that it was not possible because of lack of time. At that moment, attackers on 2 Dyna trucks and 2 Torlagi cars, altogether 4 vehicles, which had been tailing the convoy, repeatedly shouted "Relying on external forces, axe handles; people with negative views, we don't want!" So shouting, they alighted from their vehicles. In response to that, Kyi villagers, who had come out to welcome Daw Suu and the NLD members, shouted, "We the people, in turn, don't want you!" At that, the USDA members, their mercenaries, and the faked monks, who had got off from the Dyna and Torlagi asked, "What are you saying?" So asking, they started to attack the Kyi villagers with pointed iron



rods, iron bars, bamboo sticks and wooden bats, which they had brought in advance with them. As one of the attackers' Dyna trucks attempted to run over the people seen in the light of the cars, the villagers had to run in disorder. Then they gradually approached the convoy of Daw Aung San Suu Kyi.

At the mean time, about three thousand thugs holding the similar lethal weapons, who were laying in wait to attack beside the road appeared immediately. They joined the previous perpetrators and attacked the people in the cars of the convoy, including that of Daw Aung San Suu Kyi, NLD supporters who were taking motorbikes, and the people who came along to send off the NLD, systematically. The killing field could be seen in the light of some Dyna trucks numbered at least four that had been tailing the convoy.

The faked monks with red armband and people in civilian clothes with white arm band while beating the women, they shouted, "Race destroying women; You want to be wives of Kala ⁴; Before you make yourselves wives of Kala, become our wives." Shouting such un-

speakable abuses, they beat on violently without ceasing. From the women victims who had fallen to the ground, they pulled their NLD uniform jackets and sarongs, and they wrapped the hair around their hands and bumped the faces against the tar road. They rudely and savagely attack- ed until



Depayin Massacre site (photo contributed by US Embassy in Rangoon.)

causing fatal injuries. They looted ornaments and cash from the victims.

The attackers concentrated their savage assault on the right side of Daw Aung San Suu Kyi's car, where members of the Youths responsible for security stood, with linked hands, in tiers. Many members of the youth security detail were seriously injured. As they hit violently and repeatedly on the head, NLD photographer Tin Maung Oo and Ko Thein Toe was killed on the spot. To terrorize the victims, the attackers violently struck the cars with iron bars and broke car windows by stabbing with pointed iron rods. In the vehicle, with registration number Ar/5415, were Daw Aung San Suu Kyi, Ko Tun Zaw Zaw, the NLD Central Youths security officer, and car driver Kyaw Soe Lin, member of Mandalay Division NLD. Daw Aung San Suu Kyi's car had to rush out while members of youth security detail, giving close protection to Daw Suu's car, came under intense and violent attack. At the same time, the attackers launched a violent assault on the car of NLD Vice-Chairman U Tin Oo and then they seized U Tin Oo at the place of attack and took him away.

The victims who escaped from the first killing field near Kyi Village and fled towards Depayin were attacked again by more than 1,000 attackers, who were waiting ready on the left and right sides of the road, at a place near the compound of local Irrigation Department. It was a second killing field. It could also be seen with the spotlights already installed in the big

rain trees beside the road and in the light of many Dyna Trucks that had been positioned by the authorities. Daw Aung San Suu Kyi and Dr. Hla Soe Nyunt narrowly escaped attack at the second killing field, because their cars rushed through the waiting crowd at high speed.

The reliable sources indicate that the authorities gathered and trained these terrorist attackers numbered about 5,000⁵, comprising the USDA members and other criminals from the prisons. They attacked Daw Aung San Suu Kyi and party, as well as the local population, who came out to welcome her and the accompanying NLD members, using violence and terror, with the intention of causing grievous injuries and death to a large number of the innocent, defenseless and the unsuspecting civilians.

It was learned that on the night of attack, after 11:00 p.m. about 80 riot policemen, with shields and sticks, in 4 Dyna trucks and 2 cars, that looked like Pajero jeeps, arrived at the scene of the attack. Two officers got off from the 2 smaller cars and inspected the scene of the attack. The policemen threw the bodies of the dead and the injured, as if they were garbage, into the trucks. The two Hilux pickup trucks left at the scene were pushed down into the rice field and then they set them up as if they had overturned. The other two Hilux pickup trucks were set up to look like as if they had had a head-on collision. Then they took pictures of them with video and still cameras, for the record. On the morning of May 31, an emergency police station was set up near the compound of the Irrigation Department not far from the place of the incident. In order to eliminate all the evidence, water was brought in with municipal trucks and bloodstains and other marks were washed away by the policemen, using brooms⁶.

Endnotes

¹ State Peace and Development Council (the Military junta of Burma)

² Short for Daw Aung San Suu Kyi.

³ Union Solidarity and Development Association (a puppet organization of the SPDC)

⁴ A derogatory word for Indians and Westerners.

⁵ New Light of Myanmar, June 1, 2003 (SPDC, May 31 press conference)

⁶ Statement by Ko Chit Sann

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Affidavit of Wunna Maung on Depayin Massacre (Burma)



I, Wunna Maung, hereby swear under oath that:

1. I am a citizen of Burma, holding National Identification Card No-9/MCS- (N) 003840. I was born on March 16, 1977. My parents are U Kyaw Maung and Daw Tin Win. I live in Htundone Myo Thit, Chan Mya Thar Zi Township, Mandalay. I make this affidavit in support of my statement on Depayin Massacre, Burma, took place on May 30, 2003.

2. I had applied for a membership in the Mandalay National League for Democracy (NLD) Youths. The NLD Vice-Chairman U Tin Oo himself said that we had been accepted as members. He continued to say that membership cards had not been issued to anyone due to prevailing situation and told us to continue to implement the Party's programs. As I had been elected by youths of Htundone Ward, I had to serve as Htundone Township Youth Organizer.

3. For the organizing trip of Daw Aung San Suu Kyi to Upper Burma, I had to serve as a youth security officer, according to the duty entrusted to me by Mandalay Division NLD. By security duty, it was meant that, the ones holding the duty had to take the responsibility of keeping a close watch on the travelling party during the whole journey in order to guard against any danger that might befall. Daw Suu entrusted security duty for the organizing trips within Mandalay Division to Dr. Hla Soe Nyunt, an elected MP of Sagaing Township Constituency No.2 in Mandalay Division. Accordingly, Dr. Hla Soe Nyunt, in turn, entrusted Youths of Mandalay Northeast, Northwest, Southeast and Southwest Townships, the duty to serve as reserve security units. For the security of Daw Suu, there were 17 members of Central Headquarters Youths who had accompanied Daw Suu from Rangoon. Whenever there was a break in the journey for rest, the Central Youths members took up position as the inner tier of security while Mandalay Township Youths members took up position as the outer tier.

4. Even before we started on the journey, we had learned that bamboo clubs troops units had been formed at the township USDA offices and training was being given with Ya-Ya-Ka chairmen serving as battalion commanders. We also learned that villagers were ordered, under a different pretext, to furnish meal packets for these trainees. For that reason, before departure on the journey, Daw Suu advised us to absolutely avoid any words or behavior that might lead to confrontation with the dictators.

5. On May 29, at about 9 am, the long line of cars and motorcycles started out in a convoy from the back of 38th Street and drove along the 84th Street. In the car I was riding in, there were Dr. Hla Soe Nyunt, Ko Aye Win, Ko Wunna, Mandalay Northwest Township Secretary U Hla Than, Ko Aung Ko, Daw Khin Aye Myint, Daw Nyunt Nyunt, and Ko Thein Zaw. To serve as a scout, a car drove at a distance ahead of the main party. The party arrived at Sagaing, at about 10: 30 am.

6. At a bend before entering Sagaing Town and after passing over Sagaing Bridge, we saw, on both sides of the road, a group of about 600 people, holding placards with slogans, "We don't want people, who don't support USDA," and they were also chanting the slogans. At a moderate distance behind the group was a large crowd of people who were welcoming Daw Suu. When we saw the people in strength welcoming and supporting us enthusiastically, we also joyously responded to their greetings. To the shouts of "Long live Daw Aung San Suu Kyi and Ba Ba U Tin Oo," we shouted in response, "Long live the people," and so on. The party did not take time to enter Sagaing Town and went on straight to Myinmu Town. The party reached Myinmu at about 12 noon and Daw Suu presided over the ceremony of installing the signboard and opening of Myinmu Township NLD office. After that, the Upper Burma Youth Organizer, Ko Tin Tun, presided over formation of Myinmu Township NLD Youths.

7. At about 3 p.m., the party started to leave for Monywa Town. On the way, we found more and more people in cars and on motorcycles coming to meet us. The party drove on in an orderly way and started to reach the entrance to Monywa at about 6 pm. As the crowd of people, coming to meet Daw Su in the town was so big that we could not reach the clock tower in the center of town, until 9:30 pm. In Monywa Daw Su addressed to the town elders and people for about 45 minutes and then the party retired for the night in Monywa Town. Daw Su slept in the house of one of the MP elects and the rest of the party found other places to retire.

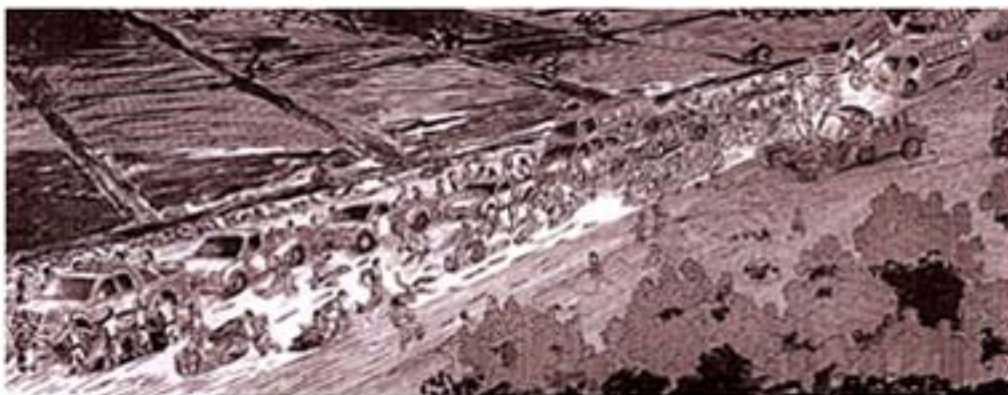
8. On May 30, the party started to leave from Monywa for Butalin Town at 10:30 am. At the beginning of the journey, 10 cars and about 150 motorcycles from Monya escorted the party. On reaching Butalin, the ceremony for installing the signboard and opening Butalin NLD Township office was held and Butalin NLD Youths was formed. At about 4:30 pm, the party started to leave Butalin for Depayin Town. On the way at Saing-pyin, Daw Su stopped to meet local NLD members and family members of U Win Myint Aung, an MP-elect, who had been held in prison, to give a word of encouragement and comfort. Before reaching Depayin, as the scout car going ahead of the party failed to return, motorcycle riders were sent to find out about the situation. However, the motorcycle riders also did not return.

9. At the exit of Monywa, our group, including Chairman U Tin Oo and Daw Su, went in to Zawtika Monastery of Monywa for paying respect to the abbot. However, the abbot was away and we continued our journey to Budalin. As we continued our journey, it was about 8:30 pm when we reached a place, near Kyi Village, between Saingpyin and Depayin, where the incident took place. At that time, there was only a car between the car we were in and Daw Suu's car. Daw Suu's car was at the forefront and in the middle was a car in which U Tun Win (from Zaygyo) and U Khin Maung Thaug were riding. Ours was the third car, which was (Hilux model, green color). Behind our car was that of MP-elect, Dr. Hla Soe Nyunt's (Sunny, white color). Behind that was the car of Central Youths (Hilux, white color) and behind the Central Youths' car were that of Vice-Chairman U Tin Oo's (microbus), and then cars of the NLD members, all in a line. After passing Kyee Village for about 300 feet, two Buddhist monks blocked the way stopping the vehicle in which Daw Suu was riding. At that moment, Ko Tun Zaw Zaw got off from the car and, when he inquired about the reason, the two monks said, "We have been waiting for a long time. Ask Daw Suu to give a speech."

In response, Ko Tun Zaw Zaw explained that the "request could not be complied with as there was no time." While he was still explaining, two Dyna and two Torlagi trucks, altogether 4 trucks, full of people, came towards us from Monywa side. The people in the trucks,

shouting over and over, the slogan, "Oppose those Relying on external forces, act as stooges; holders of negative views," alighted from the vehicles. At that moment, villagers from Kyi shouted, "We, the people in return don't want you!" At that, the USDA members and their cohorts from the trucks shouted, "What are you saying?" And with that, they started attack on the villagers with irons spike, iron bars, bamboo clubs and wooden clubs, which they had brought with them, and we had to witness the incident helplessly with a bleeding heart. At that time, as a Dyna truck also was trying to run over anyone in sight, the Kyi villagers who had come to receive us, had to run in disorder. When the two monks, who blocked Daw Suu's car for a speech, were asked to stop what was happening, they said, "We won't be able to do anything," and "You may also drive on." Just at that moment, our cars started to come under attack. I took responsibility for security on the right side of Daw Suu's car. The disposition for security was that I was close to the right side of the body of Daw Suu's car. There was no one behind me. We were standing in a line side by side. As the cars were parked close to the right side of the road, there was only one or two of us on that side. Two monks, with red cloth wrapped around the arm down to the elbow, were standing close to us. They were not the initial two monks who had blocked the way. At that moment, we saw that all the cars behind were being battered by packs of attackers. We, members of security unit, were standing from two to three tiers on the left side to cover Daw Suu's car. All the USDA members and their hired hands, attacking our cars were drunk. We learned later that from the time of departure from Monywa, a half-drum, full of liquor, was put on their car, and anyone in the car was allowed to drink as much liquor as he wished.

10. For that reason, when they attacked our cars they did it inhumanly and they shouted also, "Are you death-defying force for Kala' woman? If so die!" So shouting, they brutally struck down the youths. As there were few people on the right side of the car, the attackers concentrated their attack on the left side, and thus I escaped from the beating. When people on the other side of Daw Suu's car fell, the attackers struck down glass windows of the car. When the glasses were broken, they jabbed into the cars with the rods they were carrying. At that time we who remained shouted, "Daw Su, do run, run!" In the car, there were the driver, Kyaw Soe Lin, Ko Tun Zaw Zaw and Daw Su, only three. In the rear also, they attacked U Tin Oo's car in a pack, and I saw them seizing and taking away U Tin Oo. At that time, U Tin Oo was wounded on the head. Daw Suu escaped beating, because she did not get out of the car. If she did, the attackers would beat her to death, because the attackers were totally drunk. They did not look like they were drunk on liquor but they looked like as if they were high on drugs. While the situation was in confusion, the attackers arrived near our car and in a pack, they rushed on to attack Daw Suu's car. They knew that we would not resist and I think, for that reason, they beat up with greater force and killed more.



Sketch of the scene of the first killing field near Kyi village

11. They also beat up women in the third car (Hilux, green color), after pulling off their blouses and sarongs. When the victims covered in blood fell to the ground, I saw the attackers jumped on to them and wrapped the hair around their hands and pounded the heads against stone surface of the road, with all the force. I saw them behaving most inhumanly. I saw with my own eyes, earrings being forcibly taken from a woman who had fallen to the ground (Thanda Soe, second year student). The attackers uttered such base and sordid words like "You woman, wanting to be Kalas' wives, go ahead die! Before Kala, we will make you our wives. We have to build roads, repair roads, repair bridges and you want to be wives to Kala - die, die!" and went on brutally beating and attacking until the victims were dead. As the cars in the back kept their full headlights on, we saw all that happened. From my mind, I still cannot get rid of the sight of people, covered in blood, being beaten mercilessly and inhumanly.

12. After Daw Suu's car left, we also ran away. There were people fleeing on motorcycles and on foot. We were three, including a young monk. After running for a considerable distance, we could no longer continue to run. At that time, as we saw a car coming from behind and flagged it down. It happened to be a car from our group. All the three of us climbed onto the bonnet of the car. Before we drove for long, we saw a group of USDA members and their henchmen waiting for us on the way. We also saw about 40-50 motorcycles being beaten. Hence, we had to turn around and run back. It was only about 10-minute drive from the place we were first beaten and to the place where they were waiting. We also saw traffic police from a distance. As there was no escape for us going forward or backward, we wheeled down to the side of the road at a place that seemed to be a branch road. However, it turned out to be a ditch. The car got stuck in the mud. All the people got off and gave a push. At first, it moved a bit. After moving forward for a while, the car got stuck entirely in a ditch. No amount of pushing moved the car. As we had not had our meal and as we had to run from the killing, we became completely exhausted and could no longer push the car. There were about 18 of us who had been in the car. We were members of Youths from Mandalay who had taken responsibility for security, including the Upper Burma Youth Affairs Officer Ko Tin Tun Oo, Deputy Officer Ko Myo Naing, Joint Officer Ko Hla Oo and Central Youth Ko Thein Soe. We could no longer care about the car and all of us tried to flee, away from the danger. Fortunately, the place we came to turned out to be a big bush. In our flight, Ko Tin Htut Oo and Ko Myo Naing failed to come with us. We saw there the people, who had fled before us. We find ourselves to be a total of 97 persons and 49 motorcycles. The ones we met were girl and boy students from Monywa and Sagaing, who had come with our convoy. The counting was done, of course, only in the morning. Two among the group turned out to be members of the gang that had attacked us, supposedly on the bidding of the USDA. They told us about themselves not because we asked them. They revealed their identity on their own volition. They explained, "We had never done such a thing in our life and since we could not bear to do such a thing, we came fleeing with you."

13. After counting all the persons and motorcycles, on the morning of May 31, we all went towards the main road at 5:00 am. At first, the motorcycles were forbidden from getting on to the main road but without success. They stubbornly went on to the main road. Ko Chit Yin and I remained behind. Among those who went on to the road was Ko Hla Oo. His head was fractured and his hand was broken. The police from their car fired guns to stop the motorcycles, which got on to the road. We could see from a distance the motorcycles that ran on to the road. At that time, we heard 7 gunshots. The one who saw all the happenings was Thanda Soe, as she had been on a tree near the road, in the flight from danger, starting from the previous night. From her place in the tree, she was able to see all that happened on that morning. Three novice monks and Thanda Soe were about to get on to the road, but as I called out to them, they turned around and returned to us. Ma Thanda Soe was from

Mandalay and we had been in the same car. She was a second-year student. There were about 20 women who came all the way from Mandalay. At the time of reassembling, we found that the car, in which Pone Pone and Khin Ma Ma Tun were riding, was missing. We did not know where the rest of the women were.

14. As we did not get on to the road and just walked across the paddy fields, we reached a village called Yin-dwai. As the villagers fed us, we ate and took rest for a while. At that moment, as a child who came back from outside said to us that the village headman was asking about us, we started to set out from the village. After leaving the village and walking in the fields for about 30 minutes in time, we met six other villagers. Those people took us to their field huts and looked after us for a night.

15. On June 1, at 5:00 am, we started out from a villager's field. I put on clothes of the farmers I met on the way, with which I exchanged my Kachin sarong and white shirt. A villager showed us the way, until we reached Hsin Inn Village in Shwebo Township. That villager had sent us for about 15 miles, and until we got to Hsin Inn, we had to walk through villages. We rode in a car from Hsin Inn to Shwebo. At Shwebo, I put up at a friend's house, temporarily. While in Shwebo, I met 8 persons who had come back from Depayin attack. They said, "While we were looking for jobs, a person took us to the USDA office. We were told that we would get 800 Kyat as daily wages, meals and liquor, and the job was to gang up and beat up a group of people." "As we were afraid of the officers in that office, we said 'Yes,' and gave our promise," explained the participants in the attack.

16. With regard to furnishing liquor, we saw about it from the time we got to Saingpyin. I left Shwebo at about 1:00 pm by bus to Mandalay, and reached Mandalay at about 3:30 pm.

Dated - July 4, 2003
Bangkok, Thailand

Wunna Maung

Sworn to before me on
this 4th of July, 2003

Endnotes

¹ "Kala" is a derogatory term for Indians and White people.

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Affidavit of U Khin Zaw on Depayin Massacre (Burma)



I, U Khin Zaw, hereby swears under oath that:

1. I am a citizen of Burma. I was born in Min Hla Town of Tharawaddy District, Pegu Division in the year of 1315 B.E., and now I am 50 years old. I am the third child among seven brothers and sisters of us. My father was Artist U Khin Soe and my mother is Daw Sein Than. In 1968, I appeared in the eighth standard school examination. In 1969, I moved to Rangoon. In Rangoon, I learned about gems from my uncle and I made a living as a gem trader and broker. I had never been in politics and had never been to jail. During the BSPP Era also, I never did anything in connection with government. I had been only a simple gem dealer.
2. I joined the NLD in 1998. The reason for joining the NLD was that after voting in the 1990 election, the whole family moved to Mandalay. There I met U Hla Win (AKA) Bo Mee Khae, who was related to me. U Hla Win was a native of Moenyo and he was with Gen. Aung San in the struggle for independence, during the British and Japanese times. He was working as a patron of the Mandalay Division NLD. We lived in the same compound and, through inquiry about each other's backgrounds, we came to learn that we were related. As a result of inspiration gained through this uncle U Hla Win's persuasion and my discontent with the military regime in power, there was a welling up of political courage in me and in 1998, I became a member of the NLD in the Southwest Township of Mandalay. Now, I am a full member of the NLD.
3. Responsibility in the Mandalay Division NLD: In September 2002, I started to perform my duty as Southwest Township Organizer. I had to attend regularly the township meetings. I attended without fail the ceremonies for special days such as the Martyrs' Day, the Union Day, the Resistance Day etc. I also participated in literary functions. I had also participated in stage plays for raising social and political awareness. At ceremonies on such days as Union Day, I had the experience of reciting limericks. As there were difficulties, relating to our party in the domestic situation, even members who had joined the party before me did not have membership cards. I am included in that.
4. Our leader Daw Suu¹ was released from house arrest on May 6, 2002 and her first trip after the release was to Mandalay. When she came to Mandalay, the Mandalay Division NLD gathered the Township branches and we were given the responsibility for the security of our leader. The person supervising security arrangement was Chief of Mandalay Division NLD as well as MPElect, Dr. Hla Soe Nyunt, and we joined hands with him in taking responsibility for security. How did I have to perform my responsibility? ---Well we had to clear the way for our leader. We have to walk in front of the leader's car and clear people from the way. When our leader went to pay respect to Masoeyein Abbot, I had to personally assist her in alighting from the car. There were such little acts of responsibility constantly. At the lecture meeting held at the house of Ko Par Par Lay, I had to hold the footstool on which

Daw Suu stood and gave a speech, to kept it steady from the beginning to end. If Daw Suu walked among the people, we had to link up our hands or arms and give protection. Of course, all the members who were on duty, had to stand on the sides, about two yards from the path of U Tin Oo and Daw Suu, and link up our hands or arms for giving protection. If some thing happened, if there was some one attempting assassination on Daw Suu, we had to give protection so that the danger might not to reach Daw Suu. In giving protection, we did not mean to use violence against a suspect as our leader did not like it and our party rules also banned the use of violence. For that reason, we had to find a way to prevent danger in advance as soon as there were signs of it, in conformity with the laws laid down by the military regime in power.

5. Due to the health situation of my wife, I could not participate in the earlier trips of our leader to Mogok and Maddaya, in the last Upper Burma organizing trip. As there had been no problem during the first Mandalay trip, I thought that there could not be any problem in Maddaya trip. When I heard that there were problems during Mogoke-Maddaya trip, I became worried. I decided to go on the next trip, which was the trip to Monywa. So, I was on the trip that started out from Mandalay on the 29th. According to what I had heard about the Maddaya trip, I decided not to go on the trip as part of the Northwest Township security detail but as a person in the guise of a civilian, in order to be able to size up the situation of the trip and so, I went riding on a youth's motorcycle, remaining at a distance behind the car-motorcycle convoy. I started out from Mandalay office on the 29th at 9 am.

6. On the day the trip started, there were quite a number of Mandalay Division top NLD leaders, going with Daw Suu. As far as I remember, there were Myingyan MP-elect U Paw Khin, Dr. Hla Soe Nyunt, who took responsibility for security together with me during the first Madalay trip, as to the women, there were Daw Win Mya Mya, Upper Burma Youth Affairs officer as well as Division-level leader Ko Myo Naing, and then Division-level leader who drove the car for Ba Ba U Tin Oo, U Aung Soe, Laeway MP-elect U Tin Htut Oo who was also Upper Burma Youth Affairs officer, and Joint Upper Burma Youth Affairs officer Ko Hla Oo. From Rangoon NLD, the central level leaders were Daw Aung San Suu Kyi and Ba Ba U Tin Oo. These two were the main figures. There were also members of the Central Youths, who took responsibility for security. I do not know their names. There were people I know among members of the Youths, who were close to Daw Suu and responsible for security. From the Southwest Township, there were Ko Min Lwin, Ko Khin Oo from the central headquarters, who had recited limericks with me, and photographer of central headquarters Ko Thein Soe. There were also women, but I do not know where they came from. I knew Ko Wunna Maung. When I went on an organizing trip to their township, he was on the list of 58 persons. I initially did not know that Wunna Maung was among members of the Youths who were responsible for the security during this trip of Daw Suu.

7. When we started out from Mandalay, there were a little more than 10 cars, including the cars of Daw Suu, U Tin Oo, ours, those of Mandalay Division and the cars of the ordinary people. There were a little more than 10 motorcycles. There were some Mandalay Sanghas² and some ordinary people. The strength was only about 400, when the travelling party started to leave from Mandalay. There was a Dyna truck-full of Snaghas, - about 40-50 monks. They were hired cars. I was on a motorcycle. When the party was about to depart from the Division office, Daw Suu talked for about 15 minutes. As I was at a distance, I could not hear clearly and did not know what was spoken about. After departure, the party crossed over the Sagaing Bridge at 10:00 am. At a bend near the entrance to Sagaing Town, there were about 600-700 people standing on the left and right sides of the road and holding placards. On the placards were slogans saying, "We don't want people who don't support USDA." The people were also chanting the slogans. I realized that they had started to provoke

us with harassment and disruption. But there was no problem. After departure from Sagaing, we reached Myinmu at about 11:00, 12:00 am. In Myinmu, there were ceremony for installing NLD office signboard and other activities relating to the party. Daw Suu herself supervised the activities. The Sanghas of Mandalay had made arrangements with Sanghas of Myinmu, to protect Daw Suu's trip to Monywa. The Myinmu Sanghas came with the convoy, while Mandalay Sanghas returned to Mandalay.

8. As far as I know, we started to meet sizable number of people from Monywa at Chaung U. The party reached the entrance of Monywa after 3:00 p.m. At that time, the size of the party had increased considerably, because the people from Chaung U, Monyinthanboddya etc., including people on motorcycles and in cars, had joined the party, on the way from Myinmu. It was 9:00 p.m., when the party arrived at the center of Monywa. As the electricity had been cut off, the whole town was in darkness. When people started to light the candles, the size of the crowd was astonishing. I estimated it to be 3-4 hundred thousand. If we combined the people from Mandalay and about 400-500 people who came to meet us, after setting out from Myinmu, there would be about 700-800 people. There were people coming to join us in cars and on motorcycles on the way and the strength of the party gradually increased. When the party was headed for Monywa, our leaders' cars, cars of the security details, and the cars and motorcycles which came to send the party off, kept well to one side of the road and drove systematically. When there was overtaking, of course, the whole road became full. There was no problem for the cars coming from the opposite direction. Sometimes, cars coming from the opposite direction even stopped to give way to the convoy. When we arrived at Monywa, hundreds of thousands of people gave us a candle-lit reception. We were given candles. Of course, we were among those who lighted the candles. The people, unceasingly shouted, "Long live Daw Aung San Suu Kyi and U Tin Oo." I heard that in Monywa, Daw Suu slept in the house of an retired Col. U Tin Soe I do As I was separate, I went to sleep at a monastery.

9. Next day, in the morning, I got into town at 9:00 am. There, I heard that Daw Suu herself presided over formation of Youths in Monywa, and some pro-SPDC elements attempted to disrupt the ceremony. At about 10:00 a.m., Daw Suu went to two monasteries in Monywa, to pay respects to the senior monks. After that, we started the journey for Butalin. Something unusual after the departure from Monywa was that when we arrived at Zeedaw Village, which was near Army Northwest Command headquarters, army personnel from the Command stopped the convoy. About 14-15 cars and 20-25 motorcycles carrying Sanghas, ordinary people and students, who had accompanied us, were not allowed to proceed with the convoy. The 10 plus cars and 20 plus motorcycles that had come from Mandalay were allowed to proceed. As a result, the cars and motorcycles which were not allowed to go further had to return to Monywa and the remaining strength of our party continuing the journey, including the leaders, was about 3-4 hundred persons.

10. On arrival at Butalin, we installed the signboard of Butalin Township NLD office and Leway MP-elect Ko Tin Htut Oo, who was the Upper Burma Youth Affairs officer as well as Divisionlevel leader, presided over the formation of the Butalin Township NLD Youths. Daw Suu had allocated four Youth Affairs officers for Upper Burma and four for Lower Burma. The four for Upper Burma were Ko Tin Tun Oo, U Myo Naing, Ko Tayza Naing from Sagaing Division and Ko Hla Oo from Mandalay Northeast Township. I had heard that U Tin Tun Oo and Ko Kyaw Soe Lin, who drove Daw Suu's car, were arrested.

11. After leaving Butalin, we reached Kyee Village at about 7:30 - 8:00 p.m.. To reach Depehyin from Kyee Village, we still had to cover a distance of about 2 - 2 1/2 miles. The place we had arrived at was a jungle. However, it was not a jungle like those of Pegu Yoma. In the upper

land, jungle meant clumps of bushes and thickets. The bushes were good for hiding. About 20-25 persons could hide in a bush. Even a standing man in the bush could not be seen, as it was so thick. The motor road was on a flat land and the road was wide enough for two cars to easily pass each other. As it was about 8:00 p.m. when we arrived at the place where the incident took place, the surrounding was in pitch darkness. We could see in the headlights of our cars about 1,000 Kyee villagers, who had assembled to welcome us near the junction where the village road met the main road. At that time, the car in which Daw Suu was riding and about 10 other cars had already gone passed the village. The motorcycle I was riding on was at the end of the convoy. There were Dyna and Torlagi trucks following behind my motorcycle. While our motorcycle was passing the villagers by, cars in the convoy suddenly stopped.

12. At the time the cars stopped, I noticed that the group, which was going to disrupt Daw Suu's trip, was behind us. The people in the group held up iron bars, pointed iron rods, bamboo sticks and wooden bats, which they had brought with them and shouted, "You, destroyers of race, whores, who want to have Kala³ as husbands; Don't become Kalas' wives, become my wife!" etc. At the same time, I heard Kyee villagers countering by shouting, "You are the real destroyers of race, wreckers, act as stooges!" Then the people with weapons jumped down from their trucks and started attacking the villagers, who were welcoming Daw Suu. I did not notice exactly when the attackers started to tail the convoy. I think, these Buddhist monks were faked monks who had followed us from the Army Northwest Command, because most of the Sanghas who were accompanying us had been sent back to Monywa, as I have mentioned earlier, by personnel of the Army Northwest Command headquarters, based near Zeedaw Village. At first, we thought the monks on the Dyna and Torlagi trucks were the ones who had been accompanying us. However, we saw them taking out red cloths and wrapped them around their arms down to the elbow level. Accordingly, it was clear that they had planned in advance for the attack. I think, wrapping red cloth around the arm was an arrangement to prevent mistaken attack and to make them distinct from the monks who had accompanied us. While the commotion was thus taking place, the thugs, who had hidden in the bushes in advance, came to join forces with those who had come in the trucks. They were also armed with iron bars, pointed iron rods, bamboo sticks and wooden bats. They numbered about three thousand and the weapons they were carrying were the same as the ones carried by those who had come in the trucks. As the cars in the rear kept their headlights on, we were able to see the actions going on and the sounds and voices. We could not see the people clearly, as we were looking from a distance of about 100 yards. It was a gigantic mass of people. Kyee villagers were near the scene and they were the first who had to bear the beating, as they were the ones who exchanged hostile words with the attackers coming down from the Dyna and Torlagi trucks. For that reason, the USDA members beat them up with malice. The place where Daw Suu car was parked was quite a distance from where I was.

13. While the attack was taking place, those who came on motorcycles took flight after abandoning their bikes. Some were struck down in their attempt to flee. At that time, no one could care about his motorcycle any longer. It was a time when everyone had to run for his life. At first, I did think about helping our leaders and our NLD members. On second thought, I realized that I would surely die before I got to my leaders and my NLD members, because I had first to pass through the killing ground. It was frightening even to imagine. Before my own eyes, people were being beaten savagely. I was hearing the wounded, dying victims moaning and wailing in pain, shrieking in agony, and crying out for help. At that time, as the attackers from the Dyna trucks were shouting unspeakable abuses, it was just like the hell boiling over. I saw with my own eyes the attackers striking down the victims with all the force and stabbing viciously with pointed iron rods. Truly, it was a murderous attack. The

beating was done until the victims died.

14. I heard that U Tin Maung Oo of Southwest Township, Mandalay, was suffering from bleeding in the ears, as a result of the beating. Now, his name is on the list of those who died. He was Organizer for our Southwest Township as well as Mandalay Division headquarters photographer. Another one was Ko Thein Toe Aye, who was Candidate Organizer for our Township. His name also is on the list of those who died. It appeared that the attackers were systematically trained. They mainly aimed and struck on the head. Even when I was at a hundred yards, I heard with anguishing pain, the popping sounds of heads being broken by savage blows.

15. At about 9:00 p.m. on that night, two elders from Kyee Village came to me and one of them said, "My lad, you'd better come with me. You should not remain here." So saying they took me to the village, and from there I was sent, stage by stage, to Monywa. I had to sleep 2 nights on the way. I avoided going into Monywa and instead, I stayed in Kyaukka, a village outside of the town. From there, on June 4, I traveled back to Mandalay by bus. When I reached home in Mandalay, I saw my wife laid up in bed, as she became debilitated with illness, after hearing the news of us being beaten and slaughtered. For that reason, I took my sick wife and left urgently on the same night for Rangoon by 8:30 p.m., mail train. When I reached Rangoon, I stayed in hiding at a friend's house.

16. On the morning of June 13, my friends informed me that my father U Khin Soe, aged 76, passed away at 11 p.m., on the night of June 12. After deciding to send off my father on his last journey, even if I got arrested, I left Rangoon in the evening of June 13, by 5:00 p.m., express train, for Mandalay. I reached Mandalay on the morning of June 14, at 9:00 am, well in time for the funeral of my father. My relatives told me that my father died of grief caused by the arrest of his brother and the uncertainty as to whether I was dead or alive.

17. As soon as I arrived in Mandalay, my close relatives and friends told me that the military intelligence men had the intention to arrest me and they had subjected some of my friends to interrogation. At 2:00 p.m., the remain of my father was taken from Tundon Ward to Dagundaing Taung Myint cemetery for cremation. On return to Tundon, as I learned on the way that the military intelligence men were waiting for me at my house, I went and hid in a friend's house. From there, I arrived at a place in the liberated area, on the Thai-Burma border, on June 16.

Dated - July 4, 2003
Bangkok, Thailand

U Khin Zaw

Sworn to before me of
this 4th of July, 2003

Endnotes

¹ Short for Daw Aung San Suu Kyi.

² A Pali word meaning Buddhist monks.

³ A derogatory term for Indians and Westerners.

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Affidavit of Maung Po Zaw on Depayin Massacre (Burma)



I, Maung Po Zaw, hereby swear under oath that:

1. I, son of U Than Maung and Daw Mya Kyin, am a citizen of Burma, holding National Identification Card No Ma Ma Na (Naing) 139877. I am 23 years old residing at Ba Ba Lay Ward, Mya-yi-nanda Myothit Town, Mandalay, Burma.

2. I had never been involved in politics. I applied for membership in the NLD only two weeks before Daw Aung San Suu Kyi's trip to Mandalay. While Daw Suu¹ was staying in Mandalay, I was given nighttime security duty for two nights. Daw Suu came to Mandalay on May 26. On the next day on May 27, she went to Dada U. During Dada U trip, persons who took security

duty with me included Ko Win Kyi, Ko Pone Myint Zaw, Ko Wunna Maung, Ko Aye Win, Ko Yeh Min San, U Myint and Ko Soe. I went together with Zaw Zaw Aung, Ko Tin Aung Myint and U Tway from Southwest Township on May 29 for Mandalay-Monywa trip. On that trip, I did not take security duty for Daw Suu. Due to shortage of vehicle, only two from each township were allowed to come for security duty. However, responsible persons explained that some could come on their own expenses. Accordingly, some went with the traveling party on their own arrangement. On the Mandalay-Monywa trip, the main responsibility for Daw Suu's security was taken by members of the NLD Central Youths.

3. The Mandalay NLD members and the people who went with Daw Suu on the trip were transported in a total of about 20-30 cars and motorcycles. The car I rode in was a 'Sunny', pickup truck. In the journey from Mandalay to Sagaing, there was nothing particular, initially. However, after passing Sagaing Bridge, we started to see a crowd of about 100 people and heard them shouting, "We don't want Daw Aung San Suu Kyi." We continued to travel from Sagaing to Myinmu. We reached Myinmu after 12:00 noon. In Myinmu, the activities of installing the signboard and opening of Myinmu Township NLD office, and formation of Youths were made. We continued our journey from Myinmu at about 3:00 p.m. Before reaching Chaung U, we saw a crowd of about 170 to 180 people, holding placards, near Ye Bu Sun Village. That crowd started to hurl abuses and provoke by poking placards into the cars. On the placards were the slogans saying, "Relying on external elements, acting as stooges, NLD we don't want" etc. Consequently, the people from Myinmu who had come with the party and the Sanghas² from Monywa who had come to welcome us, requested them not to do like that. However, the placard bearers did not listen. They even started to increase their behaviors of provocation. At that time, there were police cars and authorities were among the bushes on the left side of the road. They did not try to settle the squabble between the Sanghas and the placard bearers, and just kept on watching. When the Sanghas could not prevent the acts of provocation, they started punching the placard bearers, who then turned around and departed. At the place of that incident, there were no villagers or other people. As we continued on our journey, the noisy protesters followed behind us in their own cars. At a village (name unknown) on the way between Myinmu and Monywa, we learned from the villagers that the authorities had ordered the local population not to go

out and welcome Daw Suu, when she came. At that village, we saw a number of people who were systematically lined up for protest against Daw Suu. Behind the line of people, there were two policemen in uniform, keeping watch. On the village entrance road, we saw a number of traffic policemen. Though the villagers were ordered not to come out to the road and welcome Daw Suu, they ignored the order and the entire village came out to welcome her. At that time, when the protesters saw the villagers and Sanghas in force, they remained silent, put down their placards and kept their heads bowed. I saw that, persons in the cars tailing behind our convoy were taking, with video and still cameras, pictures of the villagers clapping their hands and greeting us.

4. From Chaung U to the entrance of Monywa, I saw people on 200-300 motorcycles from Monywa coming out to welcome Daw Suu. Those cars and motorcycles drove systematically keeping to their own lanes. In Monywa, as the authorities had cut off power for the whole town, the people gave our party a candle-lit welcome. We reached Monywa at about 6:00 p.m. At about 10:30 - 11 p.m. ceremony for installing the signboard and opening of Monywa Township NLD office was performed. At about 9:00 am on May 30, the party went to Zawtika monastery of Monywa to pay respect to the abbot, but as the abbot was away, we failed to see the him. Therefore, we left for Butalin Town. Before our cars left Monywa, I saw on the left of our car, a police inspector and people with meal packs, in a Mandalay-Monywa bus (converted Dyna truck), who were going to hold protest against Daw Suu. According to a schoolteacher of Monywa, people who offered themselves to protest against Daw Suu were given free meals and 500 Kyat³ per day. At the time of departure from Monywa, there were about 12 cars of Daw Suu and NLD members. Behind our car was the car, in which the women NLD members were riding, and in the front seat of it was Daw Win Mya Mya and about 12 men and women were in the back. Monks and novices were in the last car.

5. When we left Monywa, there was still nothing unusual. On arrival in Butalin, the ceremonies for installing signboard, opening Butalin Township NLD office and formation of NLD Youths were performed. From there, we left for Saingpyin at about 6:00 p.m. In Saingpyin, Daw Suu give a speech for about 30 minutes. Then, we left for Depehyin. At that time, there were 9 cars in front of our car and 2 behind. When we arrived near Pyankya Village, I saw about 20 busses, each of which could carry 40 persons, trailing at a moderate distance behind our convoy. When we arrived near Kyee Village, 2 monks stopped the car in which Daw Suu was riding and advised Daw Suu to give a speech. Then I saw Central Youths security detail leader appealing for pardon, as no speech could be given due to lack of time. Then, the cars moved on a little. At that time, protesters trailing at a distance behind us got off their cars and started to attack the local people with wooden bats, pointed iron rods, iron bars and bamboo sticks, which they had brought with them. Daw Suu told our cars to stop. While the attack was in progress, 3-4 villagers shouted, "Daw Suu please help us!" and arrived at the place where our cars were. At that time, when Dr. Hla Soe Nyunt asked help from the two monks, they replied that it was impossible. On that day, the local authorities had come in advance and forbidden, with threats or with a promise to make offerings, all monks of the monasteries near Kyee village, to go out and welcome Daw Suu and NLD members when they arrived, give assistance or come out even if any problem arose. The monk explained that as they were forbidden like that help could not be obtained and that all communication lines had been sealed.

6. In order to document the beating of villagers on the video, attempt was made to line up the motorcycles and light up the area with their headlights. In the light from the motorcycles, we saw the attackers holding up wooden bats, iron bars, pointed iron rods bamboo sticks and shouting. At that moment, the sound of a whistle was heard, and led by monks in

red armbands, they shouted and charged towards us. While we were still dumbstruck on seeing the charge, they started attacking the last pickup truck, in which the monks and novices were.

7. After that, I saw them attacked almost simultaneously the car in which Daw Win Mya Mya and the women were riding. As things were happening like that, some got off from the cars and ran into the fields and some along the road. As people were running in all directions, our convoy of cars, including the car of Daw Suu, remained behind. At the same time, there was shouting that Daw Suu's car was under attack, and the crowd of people, which was in the front turned around and came back. While the crowd reached near Daw Suu's car, I saw the car dash out from the pack attacking it. On the car, I saw 8-9 members of Central Youths standing on steps on the sides of the car, facing one another with linked hands, and giving protection. As others cars started to follow Daw Suu's car immediately, those running jumped on to the nearest car. As the car was full, I climbed on to the roof. As we drove on for about 10 minutes, because of the sound of our cars, the cars systematically parked in the fields on the left and right sides of the roads, turned on their headlights simultaneously. As I was on the roof of the car, I could see in the light from the headlights people with bats, iron bars, bamboo sticks and pointed iron rods, waiting ready for us. When Daw Suu's car reached among the waiting attackers, they flung at the car with sticks, brickbats and iron bars they were holding in their hands and shot at it with catapults. In a pack, the ones in range also hit at it.

8. At the time when Daw Suu's car passed through the attacking crowd, our car started to enter it. Just as our car tried to rush through the crowd, a Dyna truck parked on the side of the road for the purpose of blocking charged in to hit our car. While trying to avoid collision, our car fell off the side of the road and arrived at the front of the crowd. While our car was veering, I jumped off from the roof on to the ground. While our car veered round to get back on the road, I managed to get in at the back of the car, after catching the rails on the sides. While I was trying to get back in the car, a stick thrown at me hit me in my back. The canvas sheets covering the sides of the car were taken down while the car was driving on. We were beaten for about 2 minutes by the attacking crowd. As people in the back of the car were lying flat on the floor, only persons on top got most of the beating. After driving for a few minutes, we reached Depehyin hospital. The members of the NLD Youths did not respond in kind the terrorist attack made by the crowd waiting in readiness. Daw Suu had told us that if we were wearing the NLD uniform of white shirt and Kachin Sarong, we had to bear with a bowed head, whatever was done to us, and must not retaliate.

9. When we arrived at Depehyin hospital, from our group Ko Soe (arm, knee, foot), Ko Myint U (head fractured), A student from Monywa, name unknown, (head fractured), Rev. Ashinpyinnya Depa, a monk from Yankin monastery (fractured head and elbow), 2 women NLD members from Monywa, names unknown (wounds in the head), Ko Myint Soe of Saingpyin Village, who had run away from the incident, and a person from Mandalay Southwest Township. All had to be treated as in-patients as the injuries were serious, except the one from Mandalay Southwest Township, whose injuries were light. On the second day of having treatment at the hospital, May 31, 2 traffic policemen came and took away the car driver. Then a police inspector and a policeman arrived on a motorcycle. They came to get the list of in-patients at the hospital from township hospital doctor. The patients were checked against the list and addresses of the patients were noted down.

10. After the list of patients was taken, Ko Soe said to me, "They've taken the patient list, but your name is not on it. So, you'd better leave and inform responsible persons." At about 5:00 p.m., the police inspector and 5 policemen came again to the hospital, in a car. All the

people on the list were taken for detention. After sleeping 2 nights and staying 3 days, on June 1 at 3:00 in the morning, I left the hospital, with a friend, for Depehyin railway station. On arrival at the station, my friend and I bought train tickets and took the train to Monywa. We arrived at Monywa at 10:00 a.m. After arriving in Monywa, I went round and inquired about the bus to go on to Mandalay. I found out that busses were banned for 10 days from going to Mandalay starting from May 30, and there was nighttime curfew in Monywa. I arrived back Mandalay on June 1 at 6:00 p.m.

Dated - July 4, 2003
Bangkok, Thailand

Po Zaw

Sworn to before me on
this 4th of July, 2003

Endnotes

¹ Short for Daw Aung San Suu Kyi.

² Pali word for Buddhist monks.

³ Name of Burmese currency. (500 Kyat = 45.5 US Cents)

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Affidavit of Ko Chit San on Depayin Massacre (Burma)



I, Ko Chit San, hereby swear under oath that:

1. I, son of U Kyaw Hla and Daw Thein Tin, am a citizen of Burma, holding National Identification Card No Ma-Ya-Ta (Naing) 084649. I am 36 years old residing at Yatanabonmi Quarter, Maha Aungmyay Township Mandalay. I am a car driver.

2. On May - 28 about (8) am in the morning car owner Ko Myint came and asked me to help drive his car No B/5671. He has applied NLD membership for 4 months already but was not issued membership card as yet due to security reason. I accepted his request.

3. On May - 29 about 8 am in the morning, I arrived at the Mandalay Division NLD office which is situated at the corner of 38 and 79 street and reported myself. I then went to the car, which I was to drive. At 9 am we left by the Mandalay-Sagaing Road. When we left Mandalay, Daw Aung San Suu Kyi' car, NLD Central Youth's car, NLD V/Chairman U Tin Oo's car and cars from Mandalay came along as security, 5 cars were in front of me. Altogether, there were about 20 cars and many motorcycles. Before reaching Sagaing there was no disturbance.

4. After crossing the Sagaing Bridge and on entering the town, there was about (50) people on either side of the road standing with posters, "We don't want Daw Aung San Suu Kyi - We don't want Kalar's wife". As there were monks in the motorcade, the protestors did not cause trouble.

5. We resumed our journey from Sagaing and arrived at Myinmu town at 11: 45 am. In front of the Myinmu NLD office by the roadside under a tree, I saw USDA leader sitting in seats waiting and (50) USDA members with loudspeaker in a Dyna car. They wore USDA uniforms, green sarongs and white shirts. As there were monks who came along from Mandalay and monks from Myinmu, they could do nothing. The opening of Myinmu office and the putting up of NLD signboard ceremony was held. I was in my car and did not know about the ceremony in detail.

6. We left Myinmu about 3 pm and arrived Chaung U about 4:30 pm. We took rest for a while and then continued our Journey to Monywa. On reaching Chaung U, I began to see people from Monywa came to greet us with about (70) or (80) cars and motorbikes. As there were cars in front of me, I did not know for certain. We entered Monywa at about 6 pm. As there was a black out in the town, I could see the welcoming people had lighted candles with them. After reaching the Monywa NLD office, those who were with me in my car went to put up for the night at a monastery. As I had taken the duty of a driver, I had to be with my car all the time.

7. On May 30 at about 9 am, we resumed our journey from Monywa to Butalin. In reaching Saingpyin village, Daw Aung San Suu Kyi gave a speech to the villagers, who came to welcome us and then continued the journey to Depayin at about 6 pm. We arrived at Kyi village, the place of the incident about 8 pm. After a few moments in passing Kyi village, the cars going in front stopped. Then from behind the motorcade shouting and swearing voices could be heard. "You walked on the road we built, you crossed the bridge we built, wives of Kalar, we will kill you with clubs. We have watched Chinese martial arts movies". With these barbarous words, they began to beat the people in the motorcades. They also beat our car. I witnessed through the rear view mirror in my car that the two victims, who were in my car, fell down to the ground as they were stabbed with iron spikes. The thugs were those who were rather tall. They were wearing gray-headed clothes. Their eyes were red in colour.

8. I did not know that the person sitting at my left side was attacked with which weapon. Yelling loudly, he fell on me. At the mean time, the thugs attacked the right side of my car in which I was sitting. They also struck down the window and front mirrors of my car. Then, I attempted to leave my car. As I energetically kicked the door of my car with my two legs, the attacker who was beating my car fell down to the ground. Then, I got off the car and attempted to drag the injured out. Unfortunately, it failed. The body of that victim could not respond anything. At that time, the attacker, who fell down to the ground, beat my right leg. As such, I could not continue my efforts to take the body of that victim out. At the time of the attack, I saw the killing field manifestly in the light of Dyna trucks. Then, I had to run away through the fields, where car spotlights could not reach. Subsequently, I wondered whether I had to continue running or get back to see the killing field again. After that, I decided to get back to that incident area. I watched the scene of crime from a distance. The thugs repeatedly beat the victims until they died. I also heard shouting, swearing, crying and asking for assistance. It took for such a long time. I could not estimate how long it was, as I did not have my watch.

9. Then, about 80 policemen, holding shields and wooden clubs, got to that area in four Dyna cars. After that, the two cars, those were rather similar to Pajero Mitsubishi, chased the previous convoy, and arrived at that areas. The two officers got off the car and checked the killing field. Hiding under cover of night, I witnessed that the 80 policemen threw the bodies of the dead and the injured, as if they were garbage, into the trucks. I could clearly see view in the lights of trucks, that had been to that area before, and others that got to there later, although I could not discriminate the persons who is who. The two Hilux pickup trucks left at the scene were pushed down into the rice field and then they set them up as if they had overturned. The other two Hilux pickup trucks were set up to look like as if they had had a head-on collision. Then they took pictures of them with video and still cameras, for the record. After that, I left that area so that I could find a venue to hide for a night.

10. After three hours walk, I reached Shwe-ku-ni monastery in Kyaukka village. With the permission of abbot, I slept there. In the morning of the next day, May 31, 2003, I returned to the killing field again. I saw that an emergency police station No 2 was opened near the campus of irrigation department that was closed to the killing field. In order to eliminate all the evidence, water was brought in with municipal trucks and bloodstains and other marks were washed away by the policemen, using brooms. At the mean time, except those official cars, I did not see any vehicle passing through the tar road. I took a walk from Kyaukka to Monywa town. After that, I got to Mandalay from Monywa on June 5.

11. I provide the abovementioned statements from paragraph (1) to (8), based on my personal experience at the scene of crime. I did it on my own free will, without being forced, threaten or persuaded by any influential person or persons.

Dated - July 4, 2003
Bangkok, Thailand

Ko Chit San

Sworn to before me on
this 4th of July, 2003

XXXXXXXXXC VVVVVVV

Victims of Depayin Massacre



Daw Win Mya Mya
Mandalay North-East Township
Member of Mandalay Division
NLD Organizing Committee



Daw Tin Myint
Mandalay South-East Township
Member of Township
NLD Organizing Committee



Ko Myint Maw
Mandalay South-East Township
Member of Youth Wing



U Tun Win
Mandalay Zaycho



U Khin Maung Maung
Mandalay South-West Township
Member of Township
NLD Organizing Committee



Ko Tun Zaw Zaw
NLD Youth Central
Security In-charge of
Daw Aung San Suu Kyi



Ko Khin Oo
Mayangon Township
Youth Wing In-charge
NLD Youth Central



U Myo Naing
Mandalay South-West Township
Member of Mandalay Division
NLD Organizing Committee



Ko Win Khaing
Mandalay North-West Township
Member of Youth Wing

Victims of Depayin Massacre



Ko Thein Toe Aye
Mandalay South-West Township



Kyaw Myo Thu
Mandalay South-West Township
Member of Youth Wing



Dr. Hla Soe Nyunt
MP, Singaing - 1
Mandalay Division



Ko Min Lwin
Mandalay South-West Township
In-charge of Youth
NLD Organizing Committee



Maung Soe
Mandalay South-East Township
In-charge of Youth
NLD Organizing Committee



Ko Myo Tint
Mandalay South-West Township
Member of Youth Wing



Zaw Zaw Aung
Mandalay North-East Township
Secretary of Township
NLD Organizing Committee



Ko Hla Oo
Mandalay North-East Township
Member of Township
Organizing Committee



Ma Khin Ma Ma Tun
Mandalay North-East Township
Member of Women Wing

Appendix I

Translation of interview with Zaw Zaw Aung, head of NLD Youth Wing, Mandalay Division about the brutal attack on May 30, 2003.



He was together with Daw Aung San Suu Kyi when they were attacked.

If you would like to listen the interview in Burmese, please visit (<http://www.nldla-australia.org>)

Question. You were in the midst of the attack on Daw Suu's motorcade at Depayin township in Sagaing Division and escaped luckily. What time did you leave Butalin for Depayin?

Answer: Round about 5 pm.

Q: At about what time did you reach Kyi Ywa village?

A: About 8 pm.

Q: Where there people on the road to greet Daw Aung San Suu Kyi?

A: Yes, We responded and spoke to the people.

Q: Were people who shouted and opposed Daw Aung San Suu Kyi there?

A: I heard on such shouting.

Q: It was 8 pm. when you arrived at KyiYwa. How large a number of people were there to greet and welcome you all?

A: I estimated about 3000. Could be 4 or 5 thousand.

Q: Is it a big village?

A: Yes, it is.

Q: Are there jungles surrounding Kyi Ywa?

A: There are paddy fields.

Q: Did you hear any opposing voices in the crowd that was out there to welcome you all?

A: No, I did not hear any opposing voices.

Q: Were there any posters etc. of dissent?

A: No.

Q: For how long did Daw Suu address the people?

A: Nearly 10 minutes.

Q: Again, all went on from there?

A: We had not gone very far. About 200 yards from the villagers - the car behind had not

caught up with us as yet. We were not far from the villagers. They had not yet dispersed. Then, two monks and three laymen stood in front of Daw Suu's car stopping it from proceeding. They asked Daw Suu to speak to the people.

Q: Instead of coming to place where the people had already assembled?

A: They could have joined the people, instead they stood and waited at a distance.

Q: Stood and waited, then asked for a speech?

A: Yes, they asked her to step out and speak. It was getting late. We had to go on to Depaeyin also. So, the NLD member who was in Daw Suu's car said " Revered monk, it is very late and there is no time. Please excuse your disciples." But the monks did not leave. They were looking back and said. "The people in our group are worthless." We got out of the car and stood around to protect Daw Suu. Then the monk said, "My people will be following up. Listen to a monk's words. "Give your speech to them". We requested them to let us pass through but they insisted that we stay. Then, the place was lit up by light from car head light and we saw about 7 cars.

Q: For how long did they do this?

A: It could have been not less than two hours. They went around all the cars and vehicles and watched to see if there were any movements and looked on at those with injuries.

Q: What about Daw Aung San Suu Kyi's car?

A: Very soon, after all this started five cars, including Daw Su's and U Tin Oo's car drove off to them front. The Youth Wing Security car and our Mandalay Division car too.

Q: So they escaped from Kyi Ywa and you were left behind? So the beating took place for about two hours after they had driven off?

A: Yes, it was more than two hours.

Q: Can you estimate how many died or wounded as a result of that attack?

A: More than 20 persons. I am talking about what happened at Kyi Ywa. What happened after that I am not sure.

Q: So, Daw Aung San Suu Kyi's car got away. Then again at Depaeyin the same thing happened?

A: Yes, the young people from there fled and I met them. They were attacked with spears, wooden, bamboo clubs and irons rods. They saw students with hands tied up being led away and their cycles confiscated. This person's cycle was taken but he managed to escape.

Q: Information had been received that gunshots were heard there.

A: Yes, we heard the gunshots. It was between midnight and 1 am. We were deeply worried for our Aunty Suu and Uncle U Tin Oo. Without any shooting here about 20 or so died and sustained injuries. With shooting, it could be worse. More could die.

Q: Did these attackers go forward or did they retreat?

A: It appears to be a separate group. They turned and dispersed.

Q: When was that?

A: After 10 pm.

Q: Then, how did you escape?

A: I was lucky. I escaped without any injury. I fled and crossed the paddy fields to Monywa.

Q: When you escaped what did the USDA do after they retreated?

A: Even though I was not hurt, I was shaken and very distressed. It was about 10:30. I saw person on a cycle. Likely, he came to see the spectacle. He stood and looked at the dead and after some time he departed. Then about 10:45, three Hino buses arrived without any passengers. They saw the injured and the dead, the line of cars. They turned back and left.

Q: So, those injured and the dead were left lying there?

A: Yes, I saw some being taken away on cars.

Q: In the end what happened?

A: I was not steady on my feet. I looked on. At about 12:45 (I had my watch on so I knew the time) members of the police force, the fire brigade, local authorities put the injured and dead bodies onto the motor vehicles. Then what astonished me most was that our car that was heading west for Depaeyin was pushed so that it appeared to be heading south and shoved down the ditch. Another car was pushed into the ditch. This was a deliberate act to create a different scene. I witnessed this with my own eyes.

Q: To look like two cars collided?

A: Yes, to appear that away. I couldn't believe my eyes. I remember this very clearly. Then some cars with injured people drove off towards Depaeyin. Some cars went in the other direction. About 30 persons remained. I couldn't say definitely if they were the police or the USDA because they all wore the same uniform. They pushed the cars towards Ye U side.

Q: Were these cars in which NLD members traveled?

A: Yes, they pushed them. Then we could hear them removing steel parts from them.

Q: All these happened in Kyi Ywa? You don't know what happened in Depaeyin?

A: I have no idea.

Q: Earlier you said that you heard gunshots from the place towards which the cars were heading after this incident. Some did not say so. Some said they saw. It looked like there was another party of attackers.

A: Yes, that is definite. Because we heard those shots and eyewitnesses had spoken about it.

Q: Thank you for giving us this information.

A: It is an account of what we know. If they fired guns, many would have died. It must be worse than what happened here.

Q: Later even must have been worse.

A: Yes, we have experienced a very serious attack.

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11:30, Daw Suu delivered greeting and speech to awaiting crowd and the people gave wholehearted support. When Daw Suu visited to Zaw-Ti-Ka monastery to offer breakfast in the morning on 30 May 2003 the people welcomed her by both sides of the route. For the out of order of the youth-security-truck when leaving the monastery, we acted as Butalinsecurity-guards started from Monywa.

I went and checked the entry gates to Butalin before the meal, I saw round about 15 to 20 Dyna trucks and the people and monks who wore white arm-scarfs. I heard that about 80 motorbikers who escorted Daw Suu were caught by bulb-wire at Zeedaw Village. After Daw Suu asked U Aung San, Chairman of Butalin Township NLD, and his township members to solve the problem, they were also arrested by the authorities and detained at the Northwest Military Command Headquarters. While Daw Suu was having a meal, she requested the members to go ahead but not for security concern but for hunting information. We continued our trip and reach at the Sai-Pyin-Gyi- Welcoming-Camp based at the house of U Win Myint Aung, NLD MP for Depaeyin Township Constituency, who was arrested last month and two-year-sentence with Section 505 (b). When we said Daw Suu will reach there we asked about the next route and they said it was OK and we, again, continued the trip, but nevertheless, we were arrested at (the Massacre Site) two or three miles away from Depaeyin.

The scheme was conducted by the Strategy Consultant of the Northwest Military Command Region. They knew that Daw Suu would come and gathered around four or five thousand people and fenced three-sided bulb-wire in order to beat Daw Suu and her sympathizers. They arrested us in the beginning, then brought us to the Irrigation Department compound and forced us to sit down. For a while later, the Strategy Consultant came and lied to the monks that the people were dissatisfied with Daw Suu and they were going to make a strike. They asked the monks to control the people and not to have problems. Then he himself ordered, using a microphone, the people not to step on the route where Daw Suu would come.

Meanwhile, the Dyna trucks arrived at the back of the people and, also from Kokko-tree on the left side of the road, lighted on to the crowd, and he was ordering his followers not to step onto the road. Shortly after this, Daw Suu and her group arrived. The location had a slope-down and easy to lose the location where the highway used to be. One of the five monks whom might be artificialones asked Daw Suu to climb up onto the truck and deliver speech to the people after Daw Suu reached to the crowd. While Daw Suu and Htun Zaw Zaw were saying it is too late, about 20 Dyna trucks that came from Butalin brought people and monks and cried "Kill...kill!" and launched an attack -- beating, chopping with swords, digging with bamboo-sharps -- to Daw Suu and her sympathizers. The NLD (Youth) members have no choice but to keep quiet because their policy is 'keep silence if they beat or even kill.' A few minutes later, the car that U Tin Oo was being carried arrived and he stepped off and tried to meet the Strategy Consultant.

At that time, the awaiting people started destroying U Tin Oo's car and arrested U Tin Oo and his five colleagues. When Daw Suu's car driven by Ko Kyaw Soe Lin drove ahead very quickly and the youngsters shouted as "Protact to mom, protact to mom!" and they really protested Daw Suu, riding motorbikes covering to Daw Suu's car. There was one no counter-action to the people who beat them. The Strategy Consultant tried to hit Daw Suu's car by another one truck, tete a tete, of the two Dyna he arranged.

Ko Kyaw Soe Lin drove smartly and shunned the blocked two trucks and broke through the six-foot-high four bulb-wires in order to release Daw Suu from the danger. The two Sunny pick-ups followed to Daw Suu's car, in which Daw Win Win Mya was on, and the Strategy

Consultant ordered to fire to the three pick-ups. The stand-by army and police fired and the bullets hit Daw Win Win Mya's car-tyre. The driver dropped from the car and the car hit to the roadside Kokkotree. Daw Win Win Mya's two hands and one leg were broken and injured a little in her face. The driver was cut in the forehead between the two eyes by beating and has got four stitches for the injury. The last car driven by U Thaung Nyunt, of which U Hla Soe Nyunt from Sagaing was on, was fired and glasses were smashed, seven were severely injured and the driver drove so fast to Depaeyin hospital.

Dr. Hla Soe Nyunt was shunned away from the hospital. Since Daw Suu escaped the Strategy Consultant himself ordered through the intercept-machine to the gates at Ye-Oo, Tamar-Taw, and use even machine-guns if needed, and et cetera. And he also ordered to beat and dig with bamboo and even shoot to the remaining people as foes. The authorities already announced martial law at the massacre site at Kyi Village before Daw Suu was arrived. But nevertheless, the villagers nearby the site took care of the people who escaped. The authorities ordered to shoot them too. U Tin Oo, U Tin Aung Aung, MP for Northwest Constituency, and other five people were brought to Depaeyin Police Station.

The escaped Daw Suu's four-wheel drive car, of which NLD (Youth) members and about 20 youngsters from Mandalay, Monywa, Butalin and Myinmu were on, was stopped at Ye-Oo Gate. Daw Suu herself treated to the injured youngsters. The army trucks arrived in the morning and arrested everyone at the area. The two NLD (Youth) members named Htun Zaw Zaw, Htun Myint and Daw Suu had stayed together at Ye-Oo Township Military Hall until 2:00 am, and the two members were brought away by the Strategy Consultant. All the youngsters who were on the car, apart from Daw Suu, were brought to Shwe Bo Prison at 11:00 am. Daw Suu was injured at the end of her right arm, no one knows injured whether by the beating or stone throwing, and a crashed glass cut a little at her throat too.

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Appendix III

The list of the victims of Depayin Massacre*

ACRONYM

CEC	Central Executive Committee	NLD	National League for Democracy	MP	Parliament
CRPP	Committee Representing Peoples' Parliament	PP	Political Prisoner		
Div	Division	Tsp	Township		

MP	22
Died	10
Arrested/ Sentenced	134
Disappeared	108
Total	274
Released	22
All	296

Died In Crack down

No.	NAME	FATHER'S NAME	AGE	OCCUPATION	ADDRESS	REMARK
1.	Min Zaw Oo			Technological College Student	Monywar	
2.	Myint Soe			NLD Organizer		
3.	Pyin Nya Thiri, U			Oakan Tawra Monestry		
4.	San Myint @ Raju			Driver	Mandalay North West	
5.	Thein Soe			NLD Member, Thingangyun		
6.	Thein Toe Aye			NLD	Mandalay South West	
7.	Tin Maung Oo			Photographer	Mandalay South West	
8.	Toe Toe Lwin (F)				Mandalay South West	
9.	Unknown			Buddhist novice	Oakan Monastery, Monywa	
10.	Win Thiha Maung			Student, Secound Year Eco.	Monywar	

Disappeared

NO.	NAME	FATHER'S NAME	AGE	OCCUPATION	ADDRESS	REMARK
1	Andastiya, U			Buddhist Monk, Kayah State		Disappeared
2	Aung Aung (DPNS)					Disappeared
3	Aung Aung Latt (F)				Mandalay North East	Disappeared
4	Aung Htoo			NLD, Organizer, Botahtaung Tsp.	Rangoon	Disappeared
5	Aung Khin			Mandalay	Mandalay	Disappeared
6	Aung Kyaw Myint			NLD	Mandalay South East	Disappeared
7	Aung Kyaw Soe				Mandalay North East	Disappeared
8	Aung Naing				Mandalay North East	Disappeared
9	Aung Soe, U			NLD, Secretary, Monywa Tsp.	Monywa	Disappeared
10	Aye Win			NLD	Htun-don New Tsp.	Disappeared
11	Aye Win, U			NLD (Bassein Tsp.), Irrawaddy Div.	Bassein, Irrawaddy Div.	Disappeared
12	Chit San,U	U Kyaw Hla	36	NLD Member	Mandalay	Escaped to Thailand
13	Chit Win,U			NLD, Monywa Tsp.	Monywa	Disappeared
14	Chit Yin				Mandalay South East	Disappeared
15	Cho,U			NLD office owner	Myitkyina	Disappeared
16	En-Din La Seng				Da-ning Tsp., Kachin State	Disappeared
17	Hla Moe Win			NLD	Mandalay South West	Disappeared
18	Hla Myint,Dr					Disappeared
19	Hla Soe Win				Mandalay South West	Disappeared
20	Hla Than, U			NLD	Mandalay North West	Disappeared
21	Htut Soe			NLD (Youth), Rangoon	Rangoon	Disappeared
22	Htway,U				Mandalay South East	Disappeared
23	Khin Aung Htway				Mandalay North East	Disappeared
24	Khin Aye Myint (F)				Mandalay	Disappeared
25	Khin Ma Ma Tun(F)			NLD	Mandalay North East	Disappeared
26	Khin Maung Oo				Mandalay	Disappeared

NO.	NAME	FATHERS' NAME	AGE	OCCUPATION	ADDRESS	REMARK
27	Khin Maung Thaug				Mandalay South West	Disappeared
28	Khin Mya Win (F)				Mandalay South West	Disappeared
29	Khin Oo			NLD (Youth), Mayangon	Rangoon	Disappeared
30	Khin Zaw, U	U Khin Soe	50	Organizer, Mandalay South West	Mandalay South West	Escaped to Thailand
31	Ko Lay				Mandalay North East	Disappeared
32	Ko, U			NLD, Vice Chairperson, Mogok Tsp.	Mogok Tsp., Mandalay Div.	Disappeared
33	Kyaw Aye, U			Driver	Sagaing	Disappeared
34	Kyaw Din, U			NLD, Mogok Tsp.	Mogok Tsp., Mandalay Div.	Disappeared
35	Kyaw Htaik				Mandalay North East	Disappeared
36	Kyaw Kyaw				Mandalay North West	Disappeared
37	Kyaw Myo Oo				Mandalay North East	Disappeared
38	Kyaw Myo Thu			NLD	Mandalay South West	Disappeared
39	Kyaw Soe				Mandalay North West	Disappeared
40	Kyaw Swar Win, U			NLD	Mandalay North West	Disappeared
41	Kyaw Than				Mandalay North East	Disappeared
42	Kyaw Tin Win			NLD (Youth), Daw poung	Rangoon	Disappeared
43	Kyaw Zwar Win				Mandalay North West	Disappeared
44	Kyi Kyi Myint (F)				Mandalay South West	Disappeared
45	Linn Htut Soe				Mandalay North East	Disappeared
46	Maran Po Thar, U			NLD, Kachin State		Disappeared
47	Maung Maung Lay			NLD (Youth)(student)	Kyimyinding	Disappeared
48	Maung Zaw			NLD	Htun-don New Tsp.	Disappeared
49	Min Oo, U			NLD	Mandalay North West	Disappeared
50	Min Thein				Mandalay South West	Disappeared
51	Myint Htay			NLD (Youth)(student)	Hlaing Thaya, Rangoon	Disappeared
52	Myint Myint Kyi (F)				Mandalay	Disappeared
53	Myint Myint, Daw (F)			NLD, Monyw a Tsp.	Monyw a	Disappeared
54	Myint Oo				Mandalay South East	Disappeared

NO.	NAME	FATHER'S NAME	AGE	OCCUPATION	ADDRESS	REMARK
55	Myint Wai				Yenanchaung, Magwe	Disappeared
56	Myo Naing			NLD	Mandalay	Disappeared
57	Myo Oo, U			NLD	Mandalay North West	Disappeared
58	Myo Tint				Mandalay South West	Disappeared
59	Naing Naing			DPNS		Disappeared
60	Naing Zaw Win, U			Joint Secretary, NLD, Kachin State		Disappeared
61	Nay Myo Linn				Mandalay North West	Disappeared
62	Ne Win, U			Vice-Chair person, NLD, Kachin State		Disappeared
63	Ngwe Kyaing(F)			NLD office owner's wife	Myitkyina	Disappeared
64	Nyunt Nyunt(F)			Mandalay North West	Mandalay	Disappeared
65	Phoe Zaw	U Than Maung	23	NLD Member	Mandalay	Escaped to Thailand
66	San Linn, U			NND, Chair person, Mogok Tsp.	Mogok Tsp., Mandalay Div.	Disappeared
67	Sann Lwin				Mandalay North East	Disappeared
68	Soe Soe				Htun-don new Tsp., Mandalay	Disappeared
69	Soe Win			Driver		Disappeared
70	Soe Win				Rangoon	Disappeared
71	Than Htay				Mandalay South East	Disappeared
72	Than Saung, U			NLD member		Disappeared
73	Than Tun Oo, U			NLD	Mandalay North West	Disappeared
74	Than Tun, U			NLD	Mandalay South East	Disappeared
75	Than Win				Mandalay North East	Disappeared
76	Than Win, Daw (F)			NLD, Monywa Tsp.	Monywa	Disappeared
77	Than Win, U			NLD		Hospitalized
78	Than Zaw Win			NLD	Sagaing	Disappeared
79	Thanda Soe (F)	U Ko Ko Gyi			Mandalay North West	Disappeared
80	Thein Aung Lay				Mandalay North West	Disappeared
81	Thein Oo,			Office in-charge, NLD (H-O), Rangoon	Rangoon	Disappeared
82	Thein Soe				Rangoon	Disappeared

NO.	NAME	FATHERS' NAME	AGE	OCCUPATION	ADDRESS	REMARK
83	Thein Tun			NLD (Youth)	Yankin, Rangoon	Disappeared
84	Thein Zan					Disappeared
85	Tin Maung Aye				Mandalay North West	Disappeared
86	Tin Myint (F)				Mandalay South West	Disappeared
87	Tin Myint, U			NLD	Mandalay South West	Disappeared
88	Tin Tin Myint (F)				Mandalay	Disappeared
89	Tin Tun Oo				Mandalay	Disappeared
90	Toe (F)				Mandalay South West	Disappeared
91	Toe, U			NLD	Mandalay South West	Disappeared
92	Tun Tun				Mandalay North West	Disappeared
93	Tun Tun Win				Mandalay North East	Disappeared
94	Tun Win				Mandalay South West	Disappeared
95	Ven. Eindria			Monk	Monyw a	Hospitalized
96	Ven. Zaw tica			Monk		Hospitalized
97	Ven. Zaw tica			Monk	Monyw a	Hospitalized
98	Win Aung,Dr				Amarapura T.sp.	Disappeared
99	Win Ei Phyu (F)				Mandalay North East	Disappeared
100	Win Myint Oo				Mandalay South East	Disappeared
101	Wunna (F)				Mandalay South West	Disappeared
102	Wunna Aung			NLD	Mandalay South West	Disappeared
103	Wunna Maung	U Kyaw Maung	26	NLD Member	Htun-don New T.sp.,Mandalay	Escaped to Thailand
104	Yan Naung Soe				Mandalay North East	Disappeared
105	Ye Min San			NLD	Htun-don New T.sp.	Disappeared
106	Ye Min Zaw				Mandalay South West	Disappeared
107	Ye Ye Linn (F)				Mandalay North East	Disappeared
108	Zaw Lin				Mandalay	Disappeared

Arrested/Sentenced

NO.	NAME	FATHER'S NAME	AGE	OCCUPATION	ADDRESS	WHEREABOUT	REMARK
1	Aung Aung				Mandalay North West	Shw e-bo	Arrested
2	Aung Ko,U			Mandalay North West	Mandalay North West		Arrested
3	Aung Kyaw Myint@ Aung Kyaw Kyaw Oo	U Kyi Thein	32	NLD (Youth)	Myaye Nandar Tsp., Mandalay	Khanti	Arrested
4	Aung San			NLD, Chairperson Budalin Tsp.	Budalin, Sagaing Div.	Shw e-bo	Arrested
5	Aung San Suu Kyi (F)	U Aung San	58	General Secretary of NLD	University Ave, Bahan, Rangoon	Insein	Arrested
6	Aung Soe			NLD, Organizer, Mandalay Div.	Mandalay	Shw e-bo	Arrested
7	Aung Thang		38	Secertary, Matupi NLD	Matupi Tsp., Chin State		Arrested on June 4,2003
8	Aye Win, U			NLD	Bassein	Sentenced to 4 years imprisonment on 9 July 2003	
9	Chit Tin			Mandalay North West	Mandalay North West	Shw e-bo	Severely Injured
10	En-Ding La Seng				Da Ning Tsp.		Arrested
11	Hla Moe,U		40		Matupi Tsp., Chin State		Arrested on June 4,2003
12	Hla Myint			Chairperson, Amarapura NLD	Amarapura, Mandalay Div.	Shw e-bo	Severely Injured
13	Hla Oo			Mandalay North East	Mandalay North East	Shw e-bo	Severely Injured
14	Hla Saing, U			Chairperson, Myitkyina NLD	Myitkyina, Kachin State	Myitkyina	Arrested
15	Hla Swe, U			NLD, Singu Tsp.	Singu, Mandalay Div.	Sentenced to 2 years	Arrested on May 26,2003

NO.	NAME	FATHER'S NAME	AGE	OCCUPATION	ADDRESS	WHEREABOUT	REMARK
16	Khin Khin Ohn, Daw (F)			NLD	Pharknt, Kachin State	Myitkyina	Arrested
17	Ko Ko Lwin			NLD Youth	Monywa		Arrested
18	Ko Myo			NLD (Yankin Tsp.). Rangoon	Rangoon	Shw e-bo	Arrested
19	Kyaw Din, U			NLD, Mogok Tsp.	Mogok, Mandalay Div.	Sentenced to 3 years	Sentenced in July, 2003
20	Kyaw Kyaw @ Than Chaung			NLD	Kaw thaung, Tenasserim Div.		Charged under 5(j)
21	Kyaw Soe Linn	U Ko Ko Gyi	25	NLD (Youth)	Yadanapon University, Mandalay	Khanti	Arrested
22	Kyaw Tint				Tharw uthti		Arrested
23	Kyaw Zin Lin			NLD Youth (H.O), Rangoon	Rangoon	Shw e-bo	Arrested
24	Kywe, U				Mandalay North West		Arrested
25	Maran Bauk La			Lawyer	Myitkyina, Kachin State	Myitkyina	Arrested
26	Maung Htw ay			Civilian	Madaya, Mandalay Div.	sentenced to 3 years and 3 months	Arrested with the accuse of throwing stones to the Security men
27	Maung Ko, U			NLD, Vice Chairperson, Mogok Tsp.	Mogok, Mandalay Div.	Sentenced to 3 years	Sentenced in July, 2003
28	Maung Maung Lay				Kyeemyindine Tsp.	Insein	Currently charged under 5(1)(f)(g)
29	Maung Soe, U			Civilian	Madaya, Mandalay Div.	sentenced to 3 years and 3 months	Arrested with the accuse of throwing stones to the Security men
30	Min Aung				Chaung-oo Tsp.	Shw e-bo	Severely Injured
31	Min Lwin	U Kyi	34	NLD (Youth) Mandalay South west	Maha Aung Myay Tsp., Mandalay	Khanti	Arrested
32	Min Lwin	U Kyi	35	NLD (Youth), (H.O)	University Ave., Rangoon	(Shw e-bo)	(Transferred from Khanti)
33	Min Min Zaw						Arrested

NO.	NAME	FATHER'S NAME	AGE	OCCUPATION	ADDRESS	WHEREABOUT	REMARK
34	Min Thu			NLD (Youth), Mogok	Mogok, Mandalay Div.		Arrested on July 19, 2003
35	MoeZaw @Pauk Pauk	U Kyi Thein	31	NLD (Youth)	Sanchaung,Rangoon	Khanti	Arrested
36	Myint Htay			NLD Youth, Tamwe Tsp.	Tamwe Tsp.	Insein	Currently charged under 5(1)(f)(g)
37	Myint Kyaw	U Aung Than	37	NLD (Youth)	Tamwe Lay Campus,Rangoon	(Shwe-bo)	(Transferred from Khanti)
38	Myint Ngwe	U Chit Po	40	NLD Youth	Yenangyaung, Magwe Div.	Khanti	Arrested
39	Myint Oo,U			Organizing Committee	Mandalay South East	Shwebo	
40	Myint Sein						Arrested
41	Myint Thein, U						Arrested
42	Myo Aung			NLD Organizer	Khin Oo	Shwebo	Charged under holding Foreign Currency illegally
43	Myo Khin			NLD Secretary, Yankin Tsp.	Yankin, Rangoon Div.		Former PP
44	Myo Kyaw Thu				Mandalay North West	Shwe-bo	Arrested
45	Myo Min@Tin Myo Min	U Kyaw Hlaing	31	NLD (Youth)	Pyigyidakun Tsp; Mandalay	Khanti	Arrested
46	Myo Nyunt	U Hla Thein	37	Joint Secretary, NLD (Aloun Tsp.)	Alone Tsp,Rangoon	(Shwe-bo)	(Transferred from Khanti)
47	Myo Thant	U Thein Tan		Former NLD, Mandalay Div.	Mandalay		Arrested on June 5,2003
48	Myo Zaw Aung	U Pan Kyaing	23	NLD (3Yr. Institute of Medicine)	Mogaung, Kachin State	Khanti	Arrested
49	N/A			Monk	Yankin monestry,Monywa	Shwe-bo	Arrested
50	N/A			Monk	Yankin monestry,Monywa	Shwe-bo	Arrested
51	N/A			Monk	Yankin monestry,Monywa	Shwe-bo	Arrested
52	N/A			Monk	Yankin monestry,Monywa	Shwe-bo	Arrested
53	N/A			Youth from Rangoon	Rangoon	(Shwe-bo)	(Transferred from Khanti)
54	N/A	U Khin Maung Tin		High School Student	Yartheipan Store, Monywa		Sentenced on July 10,2003

NO.	NAME	FATHERS' NAME	AGE	OCCUPATION	ADDRESS	WHEREABOUT	REMARK
55	N/A			NLD	Bassein		Arrested on June 5, 2003
56	N/A			NLD	Bassein		Arrested on June 5, 2003
57	N/A			NLD	Bassein		Arrested on June 5, 2003
58	N/A			NLD	Bassein		Arrested on June 5, 2003
59	N/A			NLD	Bassein		Arrested on June 5, 2003
60	N/A				Dala, Rangoon Div.		Arrested
61	N/A				Dala, Rangoon Div.		Arrested
62	N/A				Dala, Rangoon Div.		Arrested
63	Thein Naing Oo			NLD	Dala, Rangoon Div.		Arrested
64	N/A			Secretary, Palaw NLD	Palaw, Tenasserim Div.	Palaw Police Station	Arrested on July 23, 2003
65	N/A			NLD (Youth)	Palaw, Tenasserim Div.	Palaw Police Station	Arrested on July 23, 2003
66	Naing Naing Aung				Mandalay	Shwe-bo	Arrested
67	Naing Than			Civilian	Madaya, Mandalay Div.	sentenced to 3 years and 3 months	Arrested with the accuse of throwing stones to the Security men
68	Naing Zaw Win			Joint Secretary, Myitkyina NLD	Myitkyina, Kachin State	Myitkyina	Arrested
69	Naw Ohn Hla (F)						Arrested
70	Ne Win			Secretary, Myitkyina NLD	Myitkyina, Kachin State	Myitkyina	Arrested
71	Ne Win			NLD Youth, Lanmadaw	Kyaw ktada Tsp.	Insein	Currently charged under 5(1)(f)(g)
72	Ngwe Kyaing, Daw (F)			NLD	Myitkyina, Kachin State	Myitkyina	Arrested on July 18, 2003
73	Nyannainda, Rev.			Monk	Yankin monestry, Monyw a	Shwe-bo	Severely Injured
74	Nyo, U			Former Vice Chairperson, Madaya NLD	Madaya, Mandalay Div.	sentenced to 3 years and 3 months	Arrested with the accuse of throwing stones to the Security men
75	Salai Pa Thang		32	University Student	Matupi Tsp., Chin State		Arrested on June 4, 2003

NO.	NAME	FATHER'S NAME	AGE	OCCUPATION	ADDRESS	WHEREABOUT	REMARK
76	San Linn, U			NLD, Chair person, Mogok Tsp.	Mogok, Mandalay Div.	Sentenced to 3 years	Sentenced in July, 2003
77	San Oo Maung, U			NLD, Joint Secretary, Singu Tsp.	Singu, Mandalay Div.	Sentenced to 2 years	Arrested on May 26,2003
78	Sein Tun, U			Chairperson, Singu NLD	Singu, Mandalay Div.	Sentenced to 2 years on July 20, 2003	Charged under Article 325, 336
79	Soe Moe Kyaw					Shwe-bo	Arrested
80	Tauk Tun Oo			NLD	De-pa-yin	Shwe-bo	Severely Injured
81	Taza Naing					Shwe-bo	Arrested
82	Than Aung, U				Tharzi	Shwe-bo	Severely Injured
83	Than Maung				Madaya, Mandalay Div.		Arrested on May 26,2003
84	Than Myat Soe				Sagaing	Shwe-bo	Arrested
85	Than Tun	U Ba Khway	47	NLD	Kamayut Tsp., Rangoon	(Shwe-bo)	(Transferred from Khanti)
86	Than Tun	U Thein	46	Organizer, Mandalay South East	Thasi(south) campus,Mandalay	Khanti	Arrested
87	Than Tun, U			NLD	Kaw thaung, Tenasserim Div.		Charged under 5(j)
88	Than Win				Sagaing	Shwe-bo	Severely Injured
89	Thant Shinn			NLD	Indaw, Sagaing Div.	Sentenced to 1 Year	
90	Thaung Naing, U			NLD, Joint Secretary, Madaya Tsp.	Madaya, Mandalay Div.		Arrested on June 22,2003
91	Thein Aung				Mandalay North West	Shwe-bo	Severely Injured
92	Thein Soe						Arrested
93	Thein Tun			College Student	Monywa		Arrested
94	Thet Naing			NLD	Singu, Mandalay Div.	Sentenced to 2 years on July 20, 2003	Charged under Article 325, 336
95	Thet Naing, U			NLD, Singu Tsp.	Singu, Mandalay Div.	Sentenced to 2 years	Arrested on May 26,2003
96	Thet Tun Oo			NLD (Youth), Mandalay	Laewe, Mandalay Div.	Shwe-bo	Arrested

NO.	NAME	FATHER'S NAME	AGE	OCCUPATION	ADDRESS	WHEREABOUT	REMARK
97	Thet Tun@Kalar	U Tin Tun	30	NLD Youth (H.Q), Rangoon	S/Okkalar, Rangoon	(Shw e-bo)	(Transferred from Khanti)
98	Thet Zaw@ Thet Tun	U Tin Tun	30	NLD (Youth)	Zay yar St.,S/Oak, Rangoon	Khanti	Arrested
99	Thiha	U Khin Maung Swe	29	NLD	Mandalay	Khanti	Arrested
100	Thura@ Thiha	U Khin Maung Swe	29	NLD (Youth)	Maha Aung Myay Tsp., Mandalay	Khanti	Arrested
101	Thwe,U				Aungmyetharzan, Mandalay	Shw e-bo	Severely Injured
102	Tin Lin			NLD	Mandalay North West	Shw ebo	
103	Tin Myint			NLD Organizer	Khin Oo	Shw ebo	Charged under possessing political documents
104	Tin Oo, U			Vice-Chairperson (NLD)(H.Q)		Kalay	
105	Tin Soe	U Pe Sein		NLD	Mohyin Tsp. Kachin State	Myitkyina	Arrested on July 18,2003
106	Tin Tin Nyo (F)			NLD	Dala, Rangoon Div.		Arrested
107	Tin Tin Oo (F)		39	Teacher (Former PP)	Dala, Rangoon Div.		Arrested
108	Toe Lwin	U Sam Aye	32	NLD (Youth)	University Ave, Bahan, Rangoon	(Shw e-bo)	(Transferred from Khanti)
109	Tun Myaing			Joint Secretary, Sagaing Div.	Sagaing	Shw e-bo	Arrested
110	Tun Myint	U tin Htut	36	Secretary of NLD Bahan Tsp.	Bahan, Rangoon	(Shw e-bo)	(Transferred from Khanti)
111	Tun Tun			Civilian	Madaya, Mandalay Div.	sentenced to 3 years and 3 months	Arrested with the accuse of throwing stones to the Security men
112	Tun Tun, U			NLD, Madaya Tsp.	Madaya, Mandalay Div.		Arrested on May 26, 2003.
113	Tun Zaw Zaw	U San Hla	38	In-charge of NLD (Youth) (H.Q)	University Ave, Bahan, Rangoon	(Shw e-bo)	(Transferred from Khanti)
114	U Hla Shwe			NLD	Singu, Mandalay Div.	Sentenced to 2 years on July 20, 2003	Charged under Article 325,336

NO.	NAME	FATHER'S NAME	AGE	OCCUPATION	ADDRESS	WHEREABOUT	REMARK
115	U Kan Tun			Secretary, NLD Mandalay Division	Mandalay	under trial	Arrested on July 19
116	U Ko Ko Gyi			Treasury, NLD Mandalay Div.	Mandalay	under trial (Arrested on July 24)	Father of Kyaw Soe Lin (Daw Suu's Driver)
117	U San			Secretary, Singu NLD	Singu, Mandalay Div.	Sentenced to 2 years on July 20, 2003	Charged under Article 325, 336
118	U Saw Tun			Lawyer	Kutok Myauk, Monywa		Sentenced on July 10, 2003
119	Win Aung, Dr.			NLD Organizer	Khin Oo		Arrested
120	Win Ko				Mandalay North East	Shwe-bo	Severely Injured
121	Win Kying			NLD Youth Mandalay		Shwe-bo	Arrested
122	Win Mya Mya(F)				Mandalay		Severely Injured
123	Yan Naing Win			2nd. Year student	Monywa	Shwe-bo	Severely Injured
124	Ye Myint Aung			NLD Mandalay North East	Mandalay North East	Shwe-bo	Severely Injured
125	Ye Ye						Severely Injured
126	Zaw Aung			NLD Youth Mandalay		Shwe-bo	Arrested
127	Zaw Khin @Zaw Lay	U Hla Myint				Shwe-bo	Severely Injured
128	Zaw Lin, U			Civilian	Madaya, Mandalay Div.	sentenced to 3 years and 3 months	Arrested with the accuse of throwing stones to the Security men
129	Zaw Tun				Sai-pyin-gyi Tsp.	Shwe-bo	Arrested
130	Zaw Win Tun	U Pyone Cho	27	NLD (Youth)	Maha Aung Myay Tsp., Mandalay	Khanti	Arrested
131	Zaw Zaw Aung				Mandalay South West	Shwe-bo	
132	Zayar Tun				Mandalay South West	Shwe-bo	
133	Zin Aung Lin				Monywa	Shwe-bo	Arrested
134	Zin Zin Latt				Mandalay North East		Severely Injured

MPs detained and Disappeared after May 30

No.	NAME	FATHER'S NAME	AGE	OCCUPATION	ADDRESS	WHEREABOUTS	REMARK
1	Aung Shwe,U	U Poe Koon	85	MP (Mayangon-1), Rangoon Div.	Rangoon	Under House Arrest	
2	Ba Ba,U	U Hoke Sein	71	MP (Myinmu-1), Sagaing Div.	Myinmu	Shwe Bo	
3	Bo Maung,U	U Bo Shin	55	MP (Tabayin-1) Sagaing Div.	Tabayin	Detained	
4	Bo Zan, U	U Ba Thaw	66	MP (Kyauk Padaung-1), Mandalay Div.	Kyauk Padaung	Detained	
5	Hla Maung,U	U Po Titt	68	MP (Kyar Inn Seikkyi), Karen State, (CRPP)		Disappeared	
6	Hla Pe,U	U Maung Hsai	76	MP (Maw lamyine Gyun), Irrawaddy Div., CEC		Under House Arrest	
7	Kyi Maung,U	U Phoe Thein	83	MP (Bahan Tsp.-2), Rangoon Div., Former PP	Rangoon	Under House Arrest	
8	Lun Tin,U	U Tun Lin	82	MP (Moulmein-1) Mon State, CEC	Rangoon	Under House Arrest	
9	Lwin,U	U Ba Tha	79	MP (Thongwa), Rangoon, NLD treasurer	Rangoon	Under House Arrest	
10	Maung Maung Latt, U@ Hlaing Ni,Dr	U Hla Myaing	53	MP (Thakata-1), Rangoon Div.	Rangoon	Disappeared	
11	May Hnin Kyi, Daw (F)	U Aung Nyunt	55	MP (Mogok-1), Mandalay Div.	Mogok	Insein	Arrested on July 17,2003 (for 3rd time)
12	Myint Kyi,U	U Tin Aung	53	MP (Katha), Sagaing Div.	Katha	Shwe Bo	Injured
13	Nyunt Wai,U	U Ba Swe	77	MP (Taungoo-2) Pegu Div., CEC		Under House Arrest	
14	Paw Khin,U	U Htwe	56	MP (Myingyan-1) Mandalay Div.		Kalay Prison	

NO.	NAME	FATHER'S NAME	AGE	OCCUPATION	ADDRESS	WHEREABOUT	REMARK
15	Saw Aung, U	U Aung Chate	68	MP (Monywa-2), Sagaing Div.	Monywa	Disappeared	
16	Saw Hlaing, U	U Nathanthee	47	MP (Inndaw), Sagaing Div.		Shwe Bo	Injured
17	Saw Htay, U	U Ba Din	69	MP (Singu), Vice-Chairperson, NLD Mandalay Div.	Mandalay	Under trial	Arrested on July 19, 2003
18	Soe Myint, U @ Thakin Soe Myint	U Shein	80	MP (South Okkalapa), Rangoon Div., CEC	Rangoon	Under House Arrest	
19	Than Tun, U	U Hpo Min	82	MP (Taungtha-2), Mandalay Div., CEC, (CRPP)		Under House Arrest	
20	Tin Aung Aung, U	U Hla Yin	60	MP (Mandalay North West-1), Mandalay Div.	Mandalay	Kalay Prison	Former PP
21	Tin Htut Oo, U	U Ko Gyi	40	MP (Lewe-1), Mandalay Div.	Mandalay	Kalay Prison	
22	Tun Myaing, U	U Chit Toak	54	MP (Wetlet-1), Sagaing Div.	Wetlet	Shwe Bo	

Released MP (6)

NO.	NAME	FATHER'S NAME	AGE	OCCUPATION	ADDRESS	REMARK
1	Hla Min, U	U Aung Hlaing		MP (Kaw thaung), Chairperson, (Tanasserim Div., Former PP	Rangoon	Released
2	Myint Thein, U	U Aung Kyi	56	MP (Kyaikmayaw -1), Mon State		Released
3	Soe Win, U	U Kyin Syne	58	MP (Pegu Tsp.), National Party for Democracy, (CRPP)		Released
4	Thein Oo, U	U Ye Baloo	54	MP (Oaktwin-1), Pegu Div.	Oaktwin	Released
5	Thein Zan, U	U Kaw Lin	57	MP (Kaw lin), Sagaing Div.	Kaw lin	Released
6	Hla Soe Nyunt, Dr			MP (Sagaing-2), Sagaing Div.	Sagaing	Released under bail

Other (16)

NO.	NAME	FATHER'S NAME	AGE	OCCUPATION	ADDRESS	REMARK
1	Aung Thein Myint			NLD(Youth)	Natmauk	Released (22 July, 2003)
2	Aung Thu Win			2nd. Year student	Monywa	Released
3	Aye Aye Mar, Daw (F)			NLD Women's Branch		Released
4	Hla Hla Moe, Daw (F)			NLD Women's Branch		Released
5	Khin Khin Win, Daw (F)			NLD Women's Branch		Released
6	Khin Myint, Daw (F)			NLD Women's Branch		Released
7	Khin Pa Pa Tun (F)				Mandalay North East	Released (2 July 03)
8	Khin Thein Soe, Daw (F)			NLD Women's Branch		Released
9	Khin Win, U			Chairperson, Yenangyaung	Yenangyaung, Magwe Div.	Released 22 July, 2003
10	Kyaw Aung			NLD, Secretary, Mandalay North West		Released
11	Kyaw Thaug			NLD Organizer (Former PP)	Sagaing	Released (15 June03)
12	Le Le, Daw (F)			Treasurer, NLD Women's Branch	Rangoon	Released
13	Maung Maung, U			Secretary, Yenangyaung	Yenangyaung, Magwe Div.	Released 22 July, 2003
14	Myint Myint Sein, Daw (F)			Chairperson, NLD Woman's Branch	Rangoon	Released
15	Than Aung, U			Organizer, Yenangyaung	Yenangyaung, Magwe Div.	Released 22 July, 2003
16	Win Khaing				Mandalay North West	Released

* *SOURCES: Assistance Association for Political Prisoners (Burma)*
UPDATE: August 2, 2003 (AAPP)

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Depayin Massacre, Crime Against Humanity, National Reconciliation and Democratic Transition

Aung Htoo¹

The Depayin Massacre that took place on May 30, 2003 is as particular as it was different from other crimes that have occurred in Burma previously. It was a well-organized heinous crime, committed by about 5,000 perpetrators under the direct control of the authorities against unarmed civilians including a Nobel Peace Laureate, her supporters and other several innocent people. This attacked was perpetrated with complete impunity as it was publicly committed while the international community was closely monitoring the organizing tour of Daw Aung San Suu Kyi, a charismatic leader of the election winning party the National League for Democracy, who has been gaining enormous support of the people. The objective of the authorities in committing such an atrocious crime is to deny the 1990 May election result once and for all by gravely intimidating the whole people.

It is also worth noting it was committed while the scope of international human rights laws have practically expanded to all areas, including under the cover of sovereignty of a state, which authoritarian regimes usually use as a shield, with the emergence of a permanent International Criminal Court on July 1, 2002. As such, it is worthy to scrutinize this crime from various perspectives including one, which embodies international crimes, such as crimes against humanity, which can be taken into action transcending over the boundary of a state. In addition, how should the national reconciliation issue be considered in connection with such a crime and what will be the appropriate alternatives in dealing with such crime, which are worthy of being explored.

The Swiss jurist Jean Graven created the term 'Crimes Against Humanity'.² After world war I, the first modern attempt was made to impute the individual criminal accountability for crimes against humanity such as those that the Central Powers had committed in numerous acts 'in violation of the established laws and customs

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¹ **Aung Htoo** is the General Secretary of the Burma Lawyers' Council.

² Jean Graven, *Les Crimes Contre Humanite*, 76 RECUEIL DES COURS 427, 433 (1950-1).

of war and the elementary laws of humanity' and the Turkish massacre of Armenians.³

The persecution, repression, and murder of civilians and those who were likely to be hostile to the German Government on a vast scale in Germany before the war of 1939 and after the war, were also analyzed as to whether they constituted crimes against humanity. The Charter of the International Military Tribunal (Nuremberg) in 1945 marked the birth of the modern notion of crimes against humanity.⁴ Article 6(c) of the Charter provided as follows:

Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

The first factor to consider on whether the Depayin Massacre falls within the range of crimes against humanity is in regards to the requirement between the crime and armed conflict. The IMT defined crimes against humanity only 'in connection with' other crimes, i.e., crimes against peace and war crimes. Then, the third committee of UN accepted a non-aligned group proposal that would include those defined in the IMT Charter 'whether committed in time of war or in time of peace'.⁵ The Chairman of the Secretary General's Commissions of Experts on the Former Yugoslavia and Rwanda have also rejected the links.⁶ The most recent statements of governments at the UN show an overt acceptance by most states that the nexus is unnecessary and gross human rights violations in peacetime are as criminal as those during armed conflict.⁷ As such, in spite of the fact that the Depayin Massacre occurred in Burma in peacetime, it will certainly be within the scope of crimes against humanity.

The second distinguishing feature of crimes against humanity is that they be committed in a planned, systematic manner insofar as they are directed against a specific 'civilian population' and not merely random individuals.⁸ The following factors indicate that the Depayin Massacre was committed as a well-planned, premeditated attack.

The second distinguishing feature of crimes against humanity is that they be committed in a planned, systematic manner insofar as they are directed against a specific 'civilian population' and not merely random individuals.⁸ The following factors indicate that the Depayin Massacre was committed as a well-planned, premeditated attack.

Providing Trainings

On May 23rd and 24th, the authorities collected the members of the USDA (Union

³ Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law*, Oxford University Press; p. 3.

⁴ *Ibid*, p. 46.

⁵ Report of the Third Committee, UN GAOR, 23 Sess., Annex, Agenda Item 55, at 3, UN Doc. A/ 7342 (1968); UN GAOR, 3d Comm., 23 Sess., 1563-1568th mtgs., UN Doc.A/C.3/SR.1563-1568 (1968).

⁶ *Supra* Note 1

⁷ *Supra* Note 2

⁸ *Supra* Note 2, p. 57.

Solidarity and Development Association) and other criminals from eight townships in Shwe Bo District and provided trainings in the campus of the Depayin State High School No.1.⁹ Depayin is one of the townships in the Shwe Bo District. There were altogether about 5,000 men in strength. On May 29th and 30th, the authorities summoned 56 big vehicles and 10 small vehicles by force for transportation and placed them in the school campus with owners and drivers.¹⁰

Preparing Weapons

On May 30, 2003, all trainees were given home made weapons, such as sharp bamboo sticks, thick and hard bamboo sticks, iron rods, pointed iron rods, wooden bats, etc. With the instructions of the authorities, seven carpenters made these weapons in two days. They also bought some other hand-made weapons from the nearby villages. Township PDC (Peace and Development Council) office clerks distributed these weapons to all trainees.¹¹

Prohibition on of Presence of Villagers at the Scene of the Crime

The authorities had ordered the local population, residing in the villages beside the road where the crime was committed, to not be present at the arrival of Daw Aung San Suu Kyi. The villagers were forbidden to welcome Daw Aung San Suu Kyi and ordered to stay inside their houses even if any problems arose.

Systematic Communication Technique

The attackers communicated to each other by using whistles and the walkie-talkies, the telecommunication devices that can be applied only by the authorities. In so doing, they also used passwords, such as San Shar, Dae Wa, Moe Pyar, Ya Htar, Ah Lin Yaung, the terms that are usually exercised in the military operations. When Daw Aung San Suu Kyi's car escaped from the ambush site and roadblocks, they sent the message to another groups through their walkie-talkie. People heard, "Kalama's car escaped, Kalama's car escaped. If she were released, you all would be fired". (Kalama is a derogatory term for Indians and westerners and it was used to indicate Daw Aung San Suu Kyi).

Positioning the Attackers and Equipment

- (a) The Dyna and Tolargy trucks, carrying about 1,000 attackers, tailed Daw Aung San Suu Kyi's convoy before they reached their targeted killing field, where the crime was to be committed.
- (b) Around that first targeted killing field, another three thousand attackers were awaiting in the clumps of bushes and thickets beside the road in the dark of night.
- (c) The bogus monks wrapped red clothes around their arms to prevent mistaken attacks and to make them distinct from the monks who had accompanied Daw Aung San Suu Kyi's convoy.

⁹ The statement of an eyewitness from inside Burma

¹⁰ The statement of another eyewitness from inside Burma

¹¹ The statement of another eyewitness from inside Burma

- (d) First, one thousand attackers started to attack Kyi villagers and the supporters of Daw Aung San Suu Kyi at the rear of her convoy.
- (e) Second, almost at the same time, the three thousand attackers awaiting in readiness joined the attack and battered all people in Daw Aung San Suu Kyi's convey.
- (f) Third, another one thousand attackers were also awaiting at the second killing field with barricades, about ten minutes drive from the first killing field. Those attackers, without having any problem with Daw Aung San Suu Kyi's convoy, assaulted all motorcycles and cars that escaped from the first killing field. The assault of one thousand criminals at the second killing field is quite evident that the whole incident was a premeditated attack.
- (g) In two killing fields, the headlights of Dyna Trucks already arranged by the authorities mainly lighted the areas. In the second killing field, spotlights were set up in the big trees beside the road.

The Number of Victims to be Constituted as Crime Against Humanity

For acts to be crimes against humanity, they might entail a large number of victims in spite of the fact that the IMT Charter and the Rome Statute of the International Criminal Court do not specifically enshrine the minimum number of victims. According to the statements of eyewitnesses in the Depayin incident, over seventy victims were massacred. The question is on whether that number might constitute a crime against humanity or not.

An example of a crime against humanity in the absence of a large number of victims might be the execution by Soviet authorities of Hungarian leader Imre Nagy in 1956. In this case, it might be argue that such a planned, systematic act is not against a 'population' at all, but only against one person, and to ascribe it as a crime against humanity would risk collapsing such crimes into common crimes. A more convincing interpretation would, however, regard the target 'against' whom the action is committed as more than the victim himself. In such a case, even though murder itself is not on a mass scale, because the killing of a political (or religious) leader is systematic insofar as it is meant to intimidate the entire 'civilian population' of his supporters (or coreligionists), it would represent a crime against humanity. Indeed, even if the victims were not leaders, a systematic act against deliberately targeted individuals could well be aimed at intimidating a broader population.¹²

In the aftermath of the Depayin Massacre, it is quite evident that the incident intimidated not only NLD members and its supporters, but also the entire 'civilian population' of the whole country, Burma. From this aspect, the Depayin Massacre certainly constitutes a crime against humanity.

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¹² Supra Note 2, p. 60.

Accountability on Previous Human Rights Abuses and National Reconciliation

A nation emerging from massive repression, abuse and trauma, requires to seek alternatives in order to reconcile itself with the pain, it has experienced, if it is going to proceed forward in a healthy democratic society.¹³ The Depayin Massacre is an intolerable pain that cannot easily be relieved and is not possible to forget without addressing the issue properly by taking an effective legal action against the perpetrators, based on the rule of law, or at least, by seeking justice for the victims.

When we neither punish nor reproach evildoer, we are not simply protecting their trivial old age, we are thereby ripping the foundations of justice from beneath new generations. (A. Solzhenitsyn)

In the aftermath of the Depayin Massacre, 'fear' 'hatred' and 'suspicion' are currently prevailing in the whole country. Confidence building, the term that Daw Aung San Suu Kyi referred to after the release from her house arrest on May 6, 2002, has already disappeared. Now people have a terrible mistrust of the military regime. Their demand for accountability for the Depayin Massacre is on the rise. They articulate that even the dismissal of Senior General Than Shwe from his position of Chairman of the State Peace and Development Council might not be satisfactory unless the Depayin Massacre issue is addressed effectively.

In the event that the perpetrators enjoy impunity for their acts in the Depayin Massacre, any attempt of the international community – regardless of UN, or EU or ASEAN or US or Thailand – to facilitate the process of national reconciliation and democratic transition in Burma, might never be successful. Even during the negotiation processes, the dialogue partners as opposition leaders will certainly have concern that their lives can be threatened at any time similar to those who were sacrificed in the Depayin Massacre. As such, without seeking accountability for the Depayin Massacre, any genuine political dialogue between SPDC and democratic forces – whether they be NLD or other ethnic nationalities – will never become a reality.

In practice, without dealing with the Depayin Massacre and providing a sense of justice to the people, how will the transition process proceed? How can a genuine National Convention be convened? Standing on the bodies of the Depayin victims that have not been buried properly, and listening to the cries of their relatives, who will draft a new constitution that should lay down a foundation for the rule of law, justice and peace? All those superficial efforts will be no more than ones that will certainly strengthen the rule of the military junta in Burma for more decades.

It is required to profoundly scrutinize the issue from both the international human rights law perspective and a moral aspect. What will happen once Burma achieves

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¹³ Neil J.Kritz and William A. Stuebner, A Truth and Reconciliation Commission for Bosnia and Herzegovina: Why, How, and When?; p.1.

a new democratic government without dealing with the legacy of the past, particularly the Depayin Massacre, which amounts to a crime against humanity? The new regime takes the place of the former regime in all matters affecting the international human rights and obligations of the state and that the successor government is obliged to investigate international human rights violations and to prosecute those responsible.¹⁴

In the event that the new government does not comply with the international human rights standard, it cannot be contrasted to the previous authoritarian regime. In addition, morally, it will not be possible for the new regime to ignore the demand of the victims, themselves, or their relatives to seek accountability for the Depayin Massacre, uncover the truth and bring justice.

If the new regime only acts after it is forced to by the moral outcry from the victims and their relatives and not by their own initiative then the truth might not be uncovered as evidence would have been repudiated by the previous authorities. Another possibility is that the new regime might attempt to take action against the perpetrators after the truth is uncovered. If it is the case, the perpetrators, who may still be remaining in power, might create problems again; society may be in chaos; and, the people may encounter another vicious circle. After taking all this into account, the best alternative is to effectively address the Depayin Massacre issue now, and not later. Superficial national reconciliation or democratic transition should not be reasonable grounds to cover the truth about the Depayin Massacre. It is quite evident that only when justice can be sought for the Depayin Massacre and all other heinous crimes that have occurred in Burma, a genuine national reconciliation will come into existence.

The objective of national reconciliation is to pave the way for the society, through which a foundation for peace, freedom and justice can be laid down within the framework of the rule of law. National reconciliation cannot be interpreted as the compulsory measure to be implemented through a political dialogue between the democratic/ethnic oppositions and the authoritarian regimes ignoring the heinous crimes that they committed and denying the principle of the rule of law. Achieving such a superficial national reconciliation will certainly collapse soon as the authorities commit more serious crimes again. The society can achieve a genuine national reconciliation only when it deals with its legacy of the past by bringing the perpetrators to justice or by seeking justice for the victims in one way or another. The former is perpetrator focus mechanism and the latter is victim focus mechanism. In the case of Burma, it will be the best in the event that both mechanisms can be applied. It may be acceptable if either one of mechanism is exercised. However, any attempt for a democratic transition or national reconciliation of Burma, lacking those two scenarios, will not be beneficial for the society.

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¹⁴ Oppenheim's International Law, ed. Robert Jennings and Arthur Watts (Harlow, Essex, England: Longman, 1992), 1: 234-235. See also, John Dugard, Retrospective Justice: International Law and the South African Model; p. 280.

Particularly, the Depayin massacre negatively impacted over Daw Aung San Suu Kyi and the NLD that will certainly be a dialogue partner in any national reconciliation and democratic transition process in Burma. Unless the issue is not addressed properly and effectively, a genuine national reconciliation based on the framework of the rule of law will never emerge. Ironically, it will only strengthen the rule of the military junta in one way or another.

Sovereignty of a State, the Intervention of the UNSC and Democratic Transition

The Depayin Massacre is a challenge to the international legal community, the international human rights organizations, the democratic leaders across the world and the United Nations as to how the perpetrators, as authorities, from a nation which is not a party to the Rome Statute of the International Criminal Court, will be brought to justice. In order to properly address the Depayin Massacre, 70 Burmese MPs have submitted their formal request to the UN Security Council. Also, Amnesty International has recommended sending an international investigation mission to Burma. Recently, the Asian Human Rights Commission also asked for the intervention of the UN Security Council for the investigation of the Depayin Massacre as a crime against humanity.

The UN General Assembly has already made a large number of resolutions on Burma with reference to the various human rights violations committed by the authorities. However, unfortunately, they have been made a mockery of by the ruling military junta for about a decade. Stepping on the UN resolutions and ignoring the demands of international human rights communities, the junta still dares to commit more heinous crimes, such as the Depayin Massacre. It is time for the UN Security Council to send an investigation mission to Burma without further delay, and bring the perpetrators to justice by forming an International Criminal Tribunal or by referring the case to the International Criminal Court.

Taking an effective action on the Depayin Massacre is a step towards laying down a foundation for the Rule of Law in Burma. It will be a historical milestone of the society that seeks justice for the diseased, the disappeared, the injured, and others who awfully suffered from the incident. More importantly, only after that, a peaceful democratic transition will certainly take place in line with the international human rights laws within the framework of the rule of law.

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The State Protection Law Protects The Junta

*Aung Naing Oo**

It was September 6, 1998 the night of a harrowing ordeal for U Kyaw San and his family.

Agents of the Burmese Military Intelligence Service (MIS) showed up early that evening, blasting their car horns. They climbed over the fence around his house and demanded that the door be opened. U Kyaw San, a former Colonel in the Burmese army, refused. The MIS officers then attempted to open the door with a crowbar. In vain, they pounded the door and shouted abuses and threats all night long.

U Kyaw San was arrested the following morning. This was his second incarceration in seven years. Previously, beginning in 1991, he had served four years of a seven years sentence. He had not committed any crimes. But his purported offence being Chairman of the National League for Democracy (NLD) the Sagaing Division.

Following his second detention, Col. Kyaw San was forced to serve the remaining three years. Yet the ordeal did not end there. The Burmese regime continued to detain him in 2001 when he was due to be freed. This time, Col. Kyaw San was charged under Burma's notorious State Protection Law (SPL). Three years on, he still remains in Burma's infamous Insein Prison.

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Broadly defined, the SPL is the most draconian legislation in Burma. Passed in 1975, it is known as the Pyithu Hluttaw (National Assembly) Law No. 3 of 1975. However, the Burmese version of the law fails to mention the exact date of promulgation.

Burma has had a host of other draconian laws to keep political dissidents in check. But the socialist government of General Ne Win felt that they became inadequate following a series of uprisings by students and workers the year before in 1974. Thus the SPL was imposed even though the 1974 constitution provided the State with special powers to impose martial law or declare a state of emergency.

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There were a few high profile cases during Ne Win's rule involving the SPL. But the current Burma's State Peace and Development Council (SPDC) has used the law extensively since it seized power in 1988. Moreover, the SPL is the very law the Burmese junta used against Burma's opposition leader Aung San Suu Kyi in 1989. Charged under the law, she spent five years under house arrest that lasted until 1995.

Another stint under a similar charge in 1999 saw Aung San Suu Kyi spend two more years under house arrest. Her third detention in 14 years came following the junta's ambush on her motorcade on May 30 this year. The UN Special Envoy to Burma, Mr. Razali Ismail, is the only person who has been allowed to see her since the latest detention.

The SPL is similar to Malaysia's Internal Security Law. It empowers state authorities to detain political dissidents without trial for a period of up to five years. The original legislation allowed only three years of detention without trial. It was increased to five years in 1991. The increase was designed to keep Aung San Suu Kyi under house arrest. Burma has myriad of repressive laws. One such law is the Emergency Provisions Act of 1950. Hundreds of SPDC's political opponents have been incarcerated under this law. But this law, like other authoritarian laws, requires a warrant from a judge. Not only the MIS personnel but also police and other state security apparatchiks can get involved in the arrest of political dissidents. And there must be a trial even in a "kangaroo" court. But the SPL is different. The function and exercise of the law does not require judicial procedures. It offers no legal protection or representation. It is entirely up to the country's ruling executive elite. "It is the void of judicial power that makes the law more stringent," said Aung Htoo, General Secretary of the exiled Burma Lawyers' Council.

Anyone charged under SPL is detained incommunicado for up to 90 days. The whereabouts of their detentions are never published. Family members are not informed within the designated period. "It took two and half years for Min Ko Naing's family to know the whereabouts of his detention," said Bo Kyi, a representative of the Assistance Association to Political Prisoners. He was referring to Min Ko Naing, a well-known student leader arrested in 1989 for his pivotal role in the 1988 uprising.

According to Bo Kyi, a former political prisoner himself, a total of 29 political prisoners were charged under this law before the May 30 ambush. The list has since grown following the detention of Aung San Suu Kyi and top NLD leadership. It now includes NLD Chairman U Aung Shwe, Vice-chairman U Tin Oo and NLD spokesperson U Lwin. In addition, an unknown number of NLD Members of Parliament detained after the May 30 incident have been charged under SPL.

The law consists of a Preamble and 24 articles. "There are a lot of contradictions. The Preamble contradicts every articles of the law," said Aung Htoo. "It is so broad and vague that it provides the Burmese military junta martial-law-like powers." But it is articles 10 (a) and (b) which stipulates the restriction of "a person against whom

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action is taken” for a period of up to 90 days - that are widely used. They are being applied in the current detention of NLD leaders.

South Africa abolished all race-laws, including detention without trial, following the successful negotiation between the Apartheid Government and the African National Congress. Likewise, the SPDC must abolish these laws, especially the SPL, during the democratic transition. Otherwise, they will stand in the way of reconciliation.

The SPL enables imposition of wide-ranging restriction on individuals. It disregards basic human rights. It does not conform to international human rights standards. The SPL protects authoritarian rulers from political dissidents. It was not made into law to protect the nation from the “angers of those who want to harm it.”

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Ethnic Problems And Constitutional Solutions

*Alan Smith**

The Politics of Ethnicity

Sooner or later, currently mutually hostile, or mutually suspicious, sections of Burma's elite will have to come up with a new constitutional structure. The process will inevitably draw on the 1947 'independence constitution' (overturned by General Ne Win in 1962) and the 1974 'one party' constitution (initiated by Ne Win). In addition, the opposition in exile has prepared a draft of a federal constitution, while in 1992 the SLORC military junta initiated the drawing up of principles for a future constitution by a, now apparently frozen, National Convention. A new constitution will open the way to transition to the rule of law and hopefully to a democratic government and politics. For Burma's **ethnic** elite, more than that is required if the new Burma is to be one that they can identify with. However, because of the multiplicity and diversity of Burma's ethnic groups and their different histories in relation to successive Burmese centers of power, they voice a wide range of aspirations with regard to their relationship with Burma in the future.

Within Burma's different ethnic communities there can also be found a range of political views; between people of different ethnic communities there will also be many points of agreement and disagreement that have nothing to do with ethnicity. Nevertheless, there is a shared view among people from the non-Burman ethnic groups that each ethnic group has a distinct ethnic identity and can only be represented effectively by somebody of that ethnic group. For the majority, ethnic Burmans, however, there is no 'Burman' identity and no effort is made to represent Burmans, politically, as an ethnic group. For Burmans, politics cuts across ethnicity, since Burma is a (multi-ethnic) nation-state and political organisations established by Burmans are usually presented as 'all Burma' in nature. For Burmans looking forward to multi-party democracy, they see politics as fought out between parties seeking support — some locally, some nation-wide, rather than a contest of ethnic electorates. Burmans tend to be Burmese nationalists.

When politically conscious groups in ethnic communities are asked to explain what they mean by the 'ethnic problem', three categories of issues are raised repeatedly.

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· **Ethnic areas (states) are either looted or neglected.**

Undoubtedly the feeling is widespread among ethnic people that, reflecting Burman-dominated government policies and practices, ethnic areas are either undeveloped and backward or exploited. They see their areas as lacking infrastructure and economic opportunities, or as being developed only in the sense that their natural resources are extracted in such a way that the local people are by-passed in terms of decision-making and benefits. Such concern reinforces the importance of the demand for self-determination or autonomy, ie self-government in some form or other, of non-Burman ethnic groups within recognized territorial units.

· **Ethnic leaders are not represented in national (government) leadership.**

It seems to be the perception of ethnic leaders that at the national level, Burman leaders assume that it is the right and responsibility for Burmans to lead. Non-Burman ethnic groups share a distinct distrust of Burman politics and political leaders, however much they try to respond positively to those Burmans expressing solidarity with them. The inclusion of ethnic leaders is often experienced as tokenistic.

· **Ethnic rights and what groups should be accorded such rights.**

Undoubtedly, the thinking of those putting forward the lack of ethnic rights, reflects a diversity of situations in which it is observed that ethnic people are seen as not being treated fairly, variously by Burmans, the state, a Burman-dominated state (ie the government and its various instruments including the army.

This means that for non-Burman ethnic communities, there will be a primary focus on how their own ethnic group, and non-Burman ethnic groups jointly, will fare vis a vis Burmans. For non-Burmans, politics revolves substantially about relations between ethnic communities, about achieving equality between the Burman and non-Burman communities and about the recognition and realisation of ethnic autonomy. Non-Burman Burmese tend to be ethno-nationalists.

The Burman political elite is divided on the question of the legitimacy of non-Burman ethnic grievances and aspirations. The Burman-dominated military insists that it must impose its nationalist will through the Burmanisation of ethnic minorities in order to counter ethnic efforts to separate from Burma. Burman political leaders in opposition to the military, tend to be more willing to recognise non-Burman grievances and to acknowledge that ways must be found to satisfy non-Burman aspirations.

The military, in response, has expressly forbidden any constitution drafting other than its own. As a result, views about the constitutional future of Burma mainly emanate from exile groups and most of the debate among pro-democracy and ethnic exiles revolves around federalism.

All this makes talking about a future constitutional order for Burma a very thorny subject. In 1995 the NLD boycotted the National Convention in protest against its undemocratic composition and process and stated its intention to develop its own version of a new constitution. The military, in response, has expressly forbidden any constitution drafting other than its own. As a result, views about the constitutional future of Burma mainly emanate from exile groups and most of the debate among pro-democracy and ethnic exiles revolves around federalism. The National Democratic Front (NDF), a military alliance of a number of the major armed ethnic insurgent groups has adopted federalism not long after its formation in 1976. When the Democratic Alliance of Burma (DAB) was formed as an umbrella

alliance between pro-democracy exiles and ethnic rebel organizations in the border area following the unsuccessful 1988 uprising, seeking to explore common ground it initiated a federal constitution drafting process. The National Council of the Union of Burma (NCUB) was formed in 1992 to bring into the border-based opposition alliance the exile MPs who had fled to the border area after the SLORC had rejected the outcome of the 1990 election. This new umbrella organisation took up the DAB's federalism project.

Among ethnic leaders in exile, a great deal of learning has occurred through participation in many different activities associated with the DAB-NCUB federal constitution-drafting process. More recently there have been efforts to foster state constitution drafting processes also. Ethnic leaders in exile have therefore had many opportunities to develop their views and voice their main concerns about a new constitution for Burma. Their views are usually stated in terms of how a federal constitution would have to be formulated to satisfy them. Sometimes this is stated in terms of 'genuine federalism', (as distinct from phony federalism e.g. that of the 1947 Union of Burma). Sometimes they have specific proposals, e.g. about the division of powers or the structure of a hypothetical federal parliament. The result is that, amongst exile groups it has become a kind of accepted orthodoxy that there is only a very narrow range of constitutional options that could satisfy ethnic requirements. Such a narrowing of options seems unfortunate and the intention here is to try instead to focus on the broadly shared concerns of ethnic communities and ethnic leaders that the federal constitution-drafting process has had to address, but to extend the range of possible solutions. This may be empowering for opposition groups, since it may equip them to respond creatively with regard to the issues that are of concern to them, regardless of what kind of constitutional framework is put up for consideration.

Ethnicity, regional autonomy and federalism

Despite a multiplicity of ethnic groups and sub-groups, there is broad consensus concerning the legitimacy of political recognition for seven major non-Burman ethnic groups politically expressed in the form of Arakan, Chin, Kachin, Shan, Karenni, Karen and Mon states. These states occupy the mainly mountainous periphery surrounding the mainly lowland Burman-dominated centre ('Burma proper' under the British). They account for most of the non-Burman population, although Rangoon is rather mixed as is the delta region and Tenasserim Division.

Amongst ethnic leaders involved in the federal constitution-drafting process, there is concern about winning recognition that there should be a 'Burman' state to complete the ethnic political map of Burma as a union of ethnic states. The 1947 constitution, sometimes referred to as 'quasi-federal', provided for a Kachin state carved out of Burma proper while the previously separately-administered Shan States and Karenni States became the Shan State and the Karenni State. Provision was made for subsequent formation of a Karen State. The Chin, with their agreement, were recognized in the form of a Chin Special Division. The rest of

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what had been 'Burma proper' was administered directly by the central government and its administrative divisions. (Recognition of Arakan and Mon claims did not emerge until after 1960.) The 1974 constitution was unitary in structure. It divided Burma into 14 administrative divisions, seven of which, however, were termed ethnic states. The National Convention's work has already revealed that the military envisage again a 7 state and 7 division formula.

The NCUB draft constitution provides for ethnic states and multi-ethnic states. It envisages eight ethnic states (i.e. including a Burman state) with the provision to form more states. Both the NCUB and National Convention, (reflecting provisions in the 1947 and 1974 constitutions) provide for an upper house of parliament to represent the ethnic nationalities. The issue of the 8 state formula versus the 14 state formula is a hot one, since the 14 state formula would neutralize the ethnic strategy to counter Burman domination of government through an ethnic-dominated and powerful upper house.

Regional Autonomy and Federalism

Autonomy is a device to allow ethnic or other groups claiming a distinct identity to exercise direct control over affairs of special concern to them, while allowing the larger entity those powers which cover common interests. Autonomy can be granted under different legal forms. (Yash Ghai 2000, p8)

Regional autonomy is a system of decentralization that can be applied to situations where there is one or more distinct group that is geographically concentrated and hence an autonomous area can be demarcated for such groups. (There are examples of attempts to provide autonomy to ethnic groups that are dispersed rather than geographically concentrated which will not be considered here.) Regional autonomy can be put into practice within a unitary state. In fact, the 1947 constitution can probably be thought of as a unitary constitution with some provisions for regional autonomy. Regional autonomy is a system that provides powers of autonomy to one or more special regions within a national structure, (sometimes constitutionally).

It is federalism that has attracted most attention within the Burmese exile opposition. Federalism is a decentralized system that divides powers between levels of government, constitutionally, such that each level is supreme within its area of jurisdiction. A federal constitution provides for autonomous segments (states, provinces etc.) within a national structure with powers of autonomy for the segments specified by the constitution.

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Federal systems can arise from two entirely different processes. A classic federal system arises from a **federating** process in which established, autonomous entities negotiate to join together by drawing up a constitution that brings a national (federal) government into existence and allocates powers between the federal level of government and the federating entities.

Where this federating process involves entities that are regarded as sovereign, the

resulting federal entity will also be sovereign, so that in a federal system, sovereignty is divided or dispersed. Federation is undoubtedly the form for achieving autonomy favoured by ethnic leaders because it seems to acknowledge their historic claims to sovereignty and therefore their right to join or abstain from joining the federating process (or perhaps to withdraw from the federation). However, a federal system can also come into being, not through a federating process but by a decentralizing process, where an established state decides to decentralize by constructing a second level of government in the form of autonomous, regional segments, but with a 'federal style' constitution. This can be called a federalizing process. (Smith 1997)

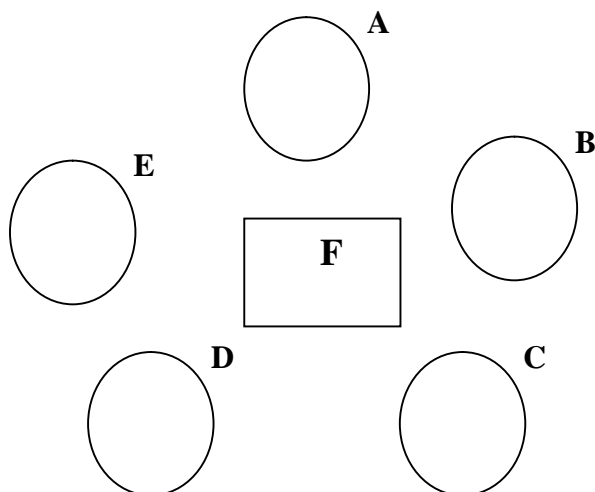
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In the federating process, the existing states call the federal government into existence; in the decentralizing (federalizing) process the national government calls the states into existence. Khin Maung Win (2001) refers to the political significance of the federating and federalizing processes in the context of alternative proposals for the future Burma.

Symmetrical and Asymmetrical Systems

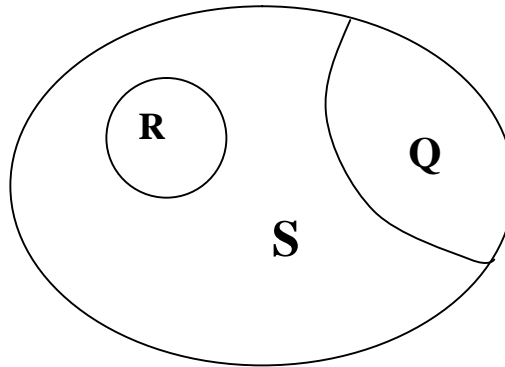
A classic federal system, ie one arising from the federating process, is likely to be a symmetrical system, ie all the segments will be subject to the same division of powers between the federal and state governments. (Fig a) A regional autonomy system is likely to be asymmetrical, ie only some parts of the country are covered by the autonomy arrangement, or different regions have different powers of autonomy. (Fig b)

Diagram a) Symmetrical federalism



A,B,C,D and E are states that join together in a federation and create a federal government F. The federal constitution resulting will treat the states as A-D as equal with all states having the same relationship (division of powers etc) with the federal government.

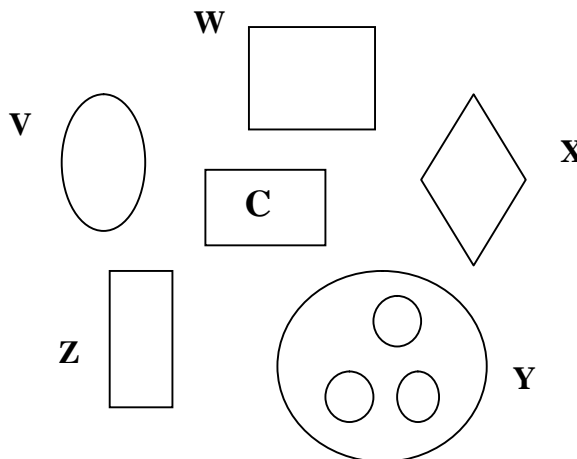
Diagram b) Regional autonomy



State S has recognised two distinct regions within the state as special autonomous regions and granted each of them the right of self-government with regard to their internal affairs.

In fact there is no real reason why a federal system cannot also be asymmetrical ie with different states within the system enjoying different levels of autonomy or subject each to a specific division of powers. (Fig c) This point was raised by Alfred Stepan in the June 2001 conference on 'Managing Democratic Transition in Burma', referring to an asymmetrical federal system resulting from a decentralizing process as more fitting the needs of the Burma situation than that of the classic, symmetrical federalism. (Stepan 2002; Zaw Oo 2002) has expressed reservations concerning the 8 state symmetrical form of federalism proposed in the NCUB draft constitution, proposing, constructively, that Burmese leaders familiarize themselves with the innovative asymmetrical federalisms of Belgium and Spain.

Diagram c) Asymmetrical federalism



V,W,X, Y and Z are states that have federal arrangements with central government C. Each state has its own unique constitutional relationship (division of powers etc) with the central government.

How to think about ethnic autonomy in Burma

It is not easy to fit the historical reality of Burma into any neat category. For example, how should the constitutional process and outcome of the independence period be represented? It was neither a pure federating process (though there were certainly elements of it) nor was it purely a process of decentralization (though there were certainly elements of that too). The resulting Union of Burma was certainly not a classic, symmetrical federal system, although many people from the ethnic communities seem convinced that that is what they thought they were getting or that is what should have been the outcome. The British had administered Burma in two distinct ways and agreement was reached between the British and the AFPFL, the party leading the nationalist movement, that the areas covered by these two systems, Ministerial Burma (Burma Proper) and the Frontier Areas or Excluded Areas, should be united (rather than withhold independence from the Frontier Areas). For the official British view of the two elements of British Burma, see Frontier Areas Committee of Enquiry 1947, Part 1. (Karenni was outside both but also subject to the British control and was invited in to the process.)

The AFPFL, which can be seen as representing the Burman-led, Burmese nationalist movement, was adamantly in favour of this 'union', but certain of the ethnic leaders within the Frontier Areas (as well as certain ethnic leaders within Ministerial Burma) were ambivalent or hostile. The negotiations and discussions at the time of Panglong and the Frontier Areas Inquiry referred repeatedly to a voluntary federating process, with demands for the 'right of secession'.^{*} Once the Constituent Assembly was at work, however, the process was effectively one of decentralizing an expanded 'Burma Proper', with the resulting system one of constitutional 'asymmetrical regional autonomy'. A new federal level of government was not called into existence, rather the government of Burma Proper, assumed the role of the government of what was called a Union, in which certain segments were granted the status of states with some autonomy. The constitution provided, however, for a time-delayed right of secession, perhaps reflecting a kind of bottom-line conditionality in the position adopted by ethnic participants as the draft was guided from the federalism they had anticipated towards something else. See Silberstein (1999, pp12-13) for a brief summary of the peculiarities of the 1947 constitution.) For discussion of the constitution-drafting by the AFPFL in advance of the Constituent Assembly and subsequently by the Constituent Assembly, which led to a system of regional autonomy, rather than a federation, see Maung Maung, 1959; for an ethnic viewpoint, see Lian Sakhong in ENSCC 2002.)

Until now, there has been a tendency for ethnic leaders to see the ethnic problem as the failure to achieve a truly federal constitution. It might be argued instead, that Burma's constitutional failure lay not in the form of the constitution adopted in

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^{*}The FACE report observes (Pt III, Par 5) "The majority of the witnesses who favoured a federation on Burma asked for the right of secession by the States at any time. Few federal constitutions contain provision for the secession of States. It seems to us that if any such right is to be contained in the federal constitution for Burma, it will have to be carefully regulated."

1947, but in the details of that constitution and the lack of commitment on the part of many political players of that time to make it work. Perhaps the greatest potential advantage of the classic federating process is that it pre-supposes a leadership pact, an agreement on a process of negotiation between mutually respectful leaders. If there is mutual respect and commitment to negotiation to reach agreement, the actual form of constitution adopted need not be crucial, for it can also be assumed that, in such a situation, if the details are unsatisfactory, they can be renegotiated.

Currently it seems that ethnic leaders desire that Burma be reconstituted along the lines of a classic federation (each segment then can voluntarily join the federation) and that it be symmetrical, ie there will be a state of Burma within the federation that will have the same level of autonomy as other states of a federation. This assumes that a new central (federal) government be created. That is the form followed by the NCUB draft federal constitution. Given the past record of the Burmese military with regard to federalism, it is difficult to imagine it agreeing to such a scheme. It seems certain, instead, as in the National Convention, to insist that there will be provision for decentralization, asymmetrically, with the 7 ethnic states plus 7 divisions of Burma proper without the creation of a new federal government.

This need not be seen as leading inescapably to irreconcilable disagreement. A constitutional structure is always the outcome of a bargaining process and an element of design. Necessarily, the process will reflect to some degree the reality of the relative power of those involved but it will also reflect the ideas and negotiating skills of those involved. Because of the reality of power, the classic symmetrical federal model desired by ethnic leaders may not be within grasp, but that should not lead to the conclusion that the interests of ethnic communities cannot be secured. In fact there is no reason to believe that a federal constitutional structure for Burma is inherently and necessarily able to deliver a better outcome for ethnic communities than some other form. It depends on the will and the details.

Different forms can be stretched and adapted to fit the purpose or purposes of those involved, provided they are clear about their interests and priorities. Providing agreement can be reached on the need for decentralization of a kind that provides autonomy to ethnic communities, the opportunity is available to those representing ethnic communities to propose measures to secure ethnic interests. The division of powers and access to resources will determine the effectiveness of autonomy, and these can be achieved through a regional autonomy system under a unitary constitution or federal or quasi-federal form. However, that presupposes that ethnic leaders have identified, and preferably have reached agreement on, key issues. They must be clear what issues affect the ability of the ethnic communities to achieve their aspirations and interests, be it control of natural resources, control of education or whatever, and they must be ready, when the time comes, to negotiate, separately or together, to secure real workable solutions.

Ethnic leaders and national government

Some ethnic leaders seem more interested in autonomy and the freedom for their community to be free from domination. Others appear to look forward to gaining opportunities to play their role in national life, which they believe the tyranny of the majority may prevent just as effectively as the tyranny of the military. The most significant, widely shared, concern is the perception by ethnic leaders that, because the Burman ethnic group are in the majority, the aspirations of the ethnic communities and the needs of the ethnic communities will be overwhelmed by the majority community and its leaders. The view is expressed that Burmans will always control the national government, and that democracy will legitimize such dominance as it did in the period of parliamentary democracy in the '50s by allowing them to control a popularly elected parliament. The response of the ethnic leaders involved in the DAB-NCUB federal constitution-drafting, drawing on their knowledge of federations elsewhere and the provisions in both the 1947 and 1974 constitutions for an upper house representing the 'nationalities', is to propose a stronger upper house of parliament that will be dominated by the non-Burman ethnic groups.

It needs to be said, however, that the strategy of seeking to protect ethnic interests through the upper house is a dangerous one. It leads in the direction of bitter confrontation: in the short term over the 8 versus 14 formula, and in the long term in an ethnic-based contest between the houses and the possible paralysis of government. Would it not be more constructive to identify more clearly the issues over which the ethnic leaders anticipate the need to counter Burman domination and address them directly, rather than relying on ethnic control of an upper house?

Another approach would be to try to ensure that ethnic groups are not excluded from representation in national level institutions by focusing on different electoral systems and the way they reflect or distort the relative size of different groups. If single member constituencies are used, ethnic parties or candidates with territorially concentrated support are sure to be represented, but likely to be under-represented, whereas if their supporters are territorially dispersed, ethnic parties or candidates may fail to gain representation. If a proportional system is used, ethnic minority parties and candidates will be represented in accordance with the level of their support. For detailed discussion of different electoral systems see Reynolds and Reilly (1997) and for the consequences of different systems in divided societies see Reilly and Reynolds (1998). The consequences of using different electoral systems in future in Burma has been presented by Reynolds at the conference 'Managing Democratic Transition in Burma', held in Bangkok in June 2001. (Zaw Oo 2002) Another electoral-based approach is to make special provision for the representation of ethnic communities in the form of a group representation system or special communal electoral rolls so as to guarantee some designated level of representation for ethnic communities. (Kymlicka 1995 Chapter 7)

In the case of Burma, where the combined ethnic minorities are still a minority, ethnic leaders assume that through the national (federal) electoral process, the result

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will be a Burman-dominated lower house and Burman domination of federal government.

A more radical solution which, like federalism, elevates the importance of continuing negotiation at the leadership level, is to adopt the system of 'segmental autonomy, proportionality, quotas and mutual veto' known as consociationalism. Under this system, rewards (e.g. positions) and resources are distributed among regional or ethnic communities by agreed quotas, usually based on population. Decision-making requires consensus among the representatives of all parties or, in this case, ethnic communities. (Reilly and Reynolds 1998, p.196; Lijphart 1977) Instead of assuming a majoritarian system and preparing to counter the tyranny of the majority in the lower house and the government through a powerful upper house, the consociational approach would require the government (ie the executive or cabinet) to be ethnically representative. Lijphart (1984 p.23) suggests that

(I)n plural societies...majority rule spells majority dictatorship and civil strife rather than democracy. What these societies need is a democratic regime that emphasizes consensus instead of opposition, that includes rather than excludes, and that tries to maximize the size of the ruling majority instead of being satisfied with a bare majority: consensus democracy.

Lijphart has sought to identify the practices that contribute to a 'consensus model of democracy' by contrast with the 'majoritarian model', by surveying 51 democracies. His most important finding with regard to this discussion of Burma is that federal systems are just as likely to be majoritarian, and unitary systems can be consensual.

The conclusion can be drawn that for the leaders of Burma's ethnic communities, it may be more important for them, rather than insisting on a pure form of federalism, to emphasise the need for a consensus model of decision-making at the national level, in addition to some real elements of autonomy and protection of the rights of minorities.

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Ethnic rights

The issue of ethnic rights is of course complex and multi-faceted. Grievances range from the abuse of ethnic civilians in conflict areas where ethnic insurgents battle with the Burma army, to the perceived discrimination against ethnic people through chauvinistic national government policies and practices e.g. language policy and recruitment and promotion in government employment.

The abuse of the rights of civilians in areas of armed conflict has been well-documented. It appears to be so widespread and systematic that it must reflect an attitude of scornful disdain for the people and for international law on the part of the Burma army, its commanders and those responsible for its behaviour in the field. In the end, however, the rights concerned are the rights of civilians in a place and time of insurgency and civil war. The remedy appears to lie, in the long term,

in retraining the armed forces to instill respect for the civilian population, perhaps removing responsibility for internal security from the armed forces, and of course, addressing the causes of insurgency in order to bring about peace and reconciliation.

This is something that a future government of Burma must be willing to undertake, however, it does not need to wait until a change of government has occurred to address such issues. It may be appropriate for ethnic armed groups to raise such issues in the process of dialogue with the military junta whenever that occurs, including the negotiation of ceasefires. The hammering out of an agreement regarding the withdrawal of all armed forces from the villages and a code of conduct for all armed groups vis a vis civilians would be one way to begin to open the way towards a more constructive form of ceasefire than has prevailed until now in Burma. It should also be regarded as a pre-requisite for repatriation of refugees.

The real issues of ethnic rights, however, are those that occur independently of armed conflict. They include the right of self determination that ethnic groups see as having been nominally recognized at the time of independence but subsequently betrayed, as well as evolving UN human rights provisions aimed at preventing discrimination and enhancing the situation of ethnic, religious and linguistic minorities. Ethnic leaders associated with insurgent movements have been reluctant to allow the language of 'minorities' to be applied to them, insisting instead on the language of nation, or ethnic nationality in order to be able to claim wider rights of self-determination of 'peoples'. This is understandable but unfortunate as the practice associated with the different provisions with regard to minorities and peoples are increasingly convergent.

Minority rights, e.g. the 1992 UN Minorities Declaration) in situations of multi-nation states where there are national minorities (ie of the Burma type rather than multi-ethnic states of the US or Australian type) increasingly are interpreted as requiring states to act to make it possible for minorities to maintain their distinct cultures, languages and religions, which may be achieved through the provision of autonomy under certain circumstances. Minority rights, "... have returned to prominence in international relations". (Kymlicka 1995, p.5) The failure of Burmese ethnic leaders in exile to recognize the pertinence of evolving international norms regarding minorities, leaves them unfamiliar with how to craft provisions for the protection of their communities. This is unfortunate because it is an area in which they could be expected to be taking practical advantage of the access they currently enjoy to international developments with regard to human rights law.

The language of self-determination may be more attractive to Burma's ethnic leaders since in the period of decolonisation it was generally equated with the right of colonial territories to achieve independence. This allows ethnic leaders to capitalize on the distinctness, separateness and autonomy that was accorded by the British to various ethnic areas in the colonial period in order to legitimize their claims for continuing recognition as separate entities. Many members of Burma's ethnic communities undoubtedly do dream of a future in which they are able to exist separately from Burma. The reality of international practice with regard to self-

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Ethnic leaders need to demonstrate clearly their commitment to the recognition and protection of the rights of minorities within the state. If they do not do this, the response of the international community to the idea of autonomy for ethnic states is likely to be fearful of the prospect of fanatical ethnic nationalism and the possibility of ethnic cleansing. This is another reason why ethnic leaders need to be thoroughly familiar with the current norms and practices regarding the rights of minorities.

determination in the UN period, however, is that it is narrowly interpreted as a right to independence only in the case of non-self-governing territories under (European) colonial rule. Coupled with the UN's fundamental commitment to the principle of territorial integrity of independent states, claims by peoples within such states (including post-colonial states) to the right of self-determination are invariably interpreted as outside the UN's interest in self-determination. International support for such claims is likely to lead, at most, to autonomy within the state rather than independence. However important the exceptions that have occurred during the breakup of the Soviet Union and Yugoslavia, nevertheless they prove the rule. In practice, what Burma's ethnic leaders can hope to achieve in terms of self-determination is a form of autonomy.

An additional point needs to be raised concerning the idea of autonomy for ethnic states. An ethnic state is essentially a territorial unit, however, the boundaries of the unit are such that, within it, one particular ethnic group will be in the majority and hence has the opportunity to direct the government of the state. Any such ethnic state, however, will also be home to other ethnic groups, long-established and recent immigrants. Ethnic leaders need to demonstrate clearly their commitment to the recognition and protection of the rights of minorities within the state. If they do not do this, the response of the international community to the idea of autonomy for ethnic states is likely to be fearful of the prospect of fanatical ethnic nationalism and the possibility of ethnic cleansing. This is another reason why ethnic leaders need to be thoroughly familiar with the current norms and practices regarding the rights of minorities.

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Endnotes

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Securing Media Freedom in a Democratic Burma: Some Reflections

Venkat Iyer *

Not for nothing has a free press – and by extension, other mass media – been described as a sine qua non of liberal democracies. Take away this important institution, and you deprive a society of one of its most vital sources of nourishment: information. It is a sobering fact, not sufficiently widely appreciated, that less than a third of the nations of the world we live in enjoy a truly free press.¹

Given this reality, and given Burma's unfortunate post-independence record of despotism and tyranny, the need for clear and hard-headed thinking on the constitutional, legal, administrative and practical protections that freedom of the media would require in any future democratic dispensation cannot be overstated. This requires, among other things, a sound understanding of the nature of Burmese society, the factors which have, in the past, allowed free and vibrant media to be so easily and so comprehensively manipulated, and the structures and processes that are likely in the future to sustain and nurture freedom of the media.

It goes without saying that while legal and constitutional protections are important, they are by no means sufficient to guarantee free and healthy media. Just as important are other requirements, including: a stable political environment; pragmatic economic policies which reward enterprise and penalise sloth; and an enlightened citizenry which is willing to exert itself in the cause of freedom, regardless of the cost involved.

Role of law

That said, it would be foolish to ignore the crucial role that the law can play in facilitating and supporting free media. For one thing, there need to be rules to

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¹ See, e.g. *Freedom of the Press 2003* (New York: Freedom House, 2003).

regulate the business and competition aspects of the media. These have become more important than ever in the current climate of globalisation and technological convergence. Absent these rules, and you have a “free-for-all” which would be a recipe for disaster. For another, there needs to be rules to regulate content. This is a contentious area where fine judgments are called for, and where idealism is often required to be tempered by the dictates of realpolitik and the prevailing hard realities on the ground.

The law itself, of course, does not exist in a vacuum. It operates within a broader framework of democratic legitimacy, which in most modern states is provided for by the principles, processes and mechanisms contained in the national constitution. Consequently, those entrusted with framing the rules of media regulation need to be aware at all times of what one writer has called “the normative and value-laden aspects of the constitution”.² It is “invariably the case that historical circumstance, combined with constitutional form and tradition, will have established the environment in which media regulation takes place.”³

The values which underpin a constitution, obviously, differ from country to country. Much will depend, therefore, on what view the founding fathers of a new Burmese Constitution take of the place that the mass media should occupy in any new polity that emerges from the demise of the current military regime. They could choose, on the one hand, to emulate the example of India, whose first prime minister, Jawaharlal Nehru, famously proclaimed his preference for “a completely free press with all the dangers involved in the wrong use that freedom than a suppressed or regulated press”.⁴ Or they could, on the other hand, opt for the model that Lee Kuan Yew, the visionary architect of independent Singapore, preferred, under which “newspapers owners [did not have] the right to print whatever they liked” and “freedom of the news media must be subordinated to the overriding needs of ... the primacy of purpose of an elected government.”⁵

Parameters

Whatever model is chosen, it is important that the parameters of media freedom are delineated as precisely as possible in the national constitution. This is especially important in a country like Burma, where the lack of a recent democratic tradition would make it risky to rely on conventions and understandings as a substitute for express constitutional provisions. The precise wording of the free press article is not as important as the clarity with which the limitations on that freedom are described. There is often a temptation for the more starry-eyed among constitu-

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² Mike Feintuck, *Media Regulation: Public Interest and the Law* (Edinburgh: Edinburgh University Press, 1999), at p. 34.

³ *Ibid.*, at p. 35.

⁴ Jawaharlal Nehru, speech against the Press Act 1910, 20 June 1916, cited in V. Iyer, *Mass Media Laws and Regulations in India* (Singapore: AMIC, 2nd ed, 2000), at p. 22.

⁵ Lee Kuan Yew, *From Third World to First: The Singapore Story 1965-2000* (New York: HarperCollins, 2000), at p. 190.

tional draftsmen to eschew any express references to restrictions on freedom, believing as they do that this would detract from the loftiness of their commitment to liberty. That, alas, often turns out to be a misguided view. Given the compulsions of a modern democracy, where people pull in different directions and where freedom is constantly subjected to stresses and strains from an immeasurable number of sources, the need for express limitations on rights and obligations cannot be overstated.

Clearly, much thought will have to be given to the heads of permissible restrictions on freedom of the media. Traditionally, the following interests have been considered worthy of protection in most contemporary societies: the reputation of individuals, the majesty and authority of the courts, national security, public order, and decency and public morals. Some societies have thought it necessary to include a few more, such as personal privacy, the sanctity of relations with other countries, and the reputation and authority of the head of state (e.g. the ruling monarch). The challenge here, as elsewhere, is to ensure that as many of the legitimate interests are protected, consistently with maximising the scope of freedom.

Once the heads of permissible restrictions are settled, it will be necessary to lay down certain safeguards against misuse or abuse of the restricting power. Various formulae have been used for this purpose, but one which commands the widest appeal today is, arguably, the approach adopted in the European Convention on Human Rights, under which the following further requirements need to be complied with for any restriction to be legally valid:

- (1) the restriction must have been prescribed by law;
- (2) it must be "necessary in a democratic society" i.e. backed by a "pressing social need");
- (3) it must be proportionate to the evil sought to be avoided or the legitimate aim sought to be pursued.

The operation of these conditions in practice has spawned a large body of case law from the European Court of Human Rights (and from the now defunct European Commission of Human Rights) over the past four decades, and this jurisprudence offers some useful lessons. No less valuable is the case law that has emerged from the superior courts of leading jurisdictions with a strong tradition of press freedom, such as the United States and India.

The second distinguishing feature of crimes against humanity is that they be committed in a planned, systematic manner insofar as they are directed against a specific 'civilian population' and not merely random individuals.⁸ The following factors indicate that the Depayin Massacre was committed as a well-planned, premeditated attack.

Having fixed the constitutional parameters for freedom of expression, the next challenge will be to provide the statutory and quasi-statutory framework (including the structures and procedures for self-regulation) for media regulation. The trick here is not only to get the minutiae of the legislation right – vastly important though that is – but also to ensure that the regulation is not so heavy-handed that it stifles the healthy growth of the media.

Ideally, the number – and prolixity – of laws should be kept to a minimum. But brevity should not be achieved at the expense of clarity or comprehensiveness.

Otherwise, there is a risk, on the one hand, of the executive branch of the government ending up with too much power by default or by stealth – through interstitial law-making – and, on the other, of media regulation becoming a fertile ground for costly, cumbersome and avoidable litigation.

On the content side, the main areas which will require legislative attention are: defamation, contempt of court, parliamentary privilege, privacy, confidentiality of journalists' sources, copyright, official secrecy, "hate" speech, obscenity, national security, public order, and commercial speech. Attention will also have to be devoted to the extent to which measures adopted during genuine national emergencies (i.e. emergencies which threaten the life of the nation) can abridge freedom of the media, and to securing access to official information as part of the normal democratic process.

Media ethics – i.e. the responsibilities of journalists – is another contentious issue which will need to be addressed if freedom of the media is not to fall into disrepute as a result of journalists behaving badly – this is a topic usually best left to self-regulation by the profession/industry, although it needs to be said that the record of self-regulation has not been universally satisfactory, and this has led increasingly to questions being asked about its effectiveness in certain societies. Whatever the model chosen for regulation of the journalistic conduct, one temptation which should be avoided at all costs is the adoption of a scheme of state licensing of journalists – nothing can be more destructive of freedom of the media than such a scheme, as the experience of many totalitarian countries has shown.

Potential threats

It is not often realised that securing the freedom of the media requires the consideration of a wide range of potential threats to that freedom. These were summed up admirably by David H. Bayley in a book published as far back as 1964 thus:

Looked at from the point of view of a newspaper editor or publisher, government may restrict the purveying of news and comment in four primary ways: (1) by regulating the content of the newspaper; (2) by interfering with the dissemination of the published paper; (3) by controlling access to the industry and influencing its structure; and (4) by affecting the economic understanding of newspaper enterprise."⁶

Content regulation – referred to above – is, therefore, but one aspect of media regulation. Equally, if not more, important are the rules concerning: media ownership; taxation; the role of foreign-owned media; the right of newspapers to determine their own level of circulation, size, and volume of advertising; access to raw

⁶ David H. Bayley, *Public Liberties in the New States* (Delhi: Oxford and IBH Publishing Co., 1964), at p. 58.

material such as newsprint, film, audio and video tapes, micro-chips; access to hardware (including plant and machinery) and software; and the right of media enterprises to hire and fire employees. One cannot also, of course, ignore the importance of rules aimed at meeting the challenges of the ongoing convergence between information and communication technologies.

Special privileges?

A fundamental issue that needs to be tackled at the outset is: to what extent, if any, should the media enjoy any special privileges under the law? In other words, does the lofty position accorded to freedom of expression in most liberal polities mean that journalists and media organisations should be exempt from some of the rigours of the general law? There is no universal answer to this question, and different societies have chosen to treat the issue differently. It would, however, be true to say that, in many liberal constitutions, freedom of expression – and by implication freedom of the mass media – occupies the position of a “preferred right”. An example of the superior status enjoyed by this right can be seen, for example, in Article 12 of the United Kingdom’s Human Rights Act 1988 which requires every court interpreting the Act to “have particular regard to the importance of ... the right to freedom of expression”. The German Constitutional Court has characterised free speech as “the most immediate manifestation of the human personality” and as indispensable for “the contest of opinions that forms the lifeblood of [a democratic] order.”⁷

The near-absolute terms in which freedom of expression is couched in the American Constitution is another example of the exalted status accorded to this freedom.⁸ Although that formulation was originally intended to apply as a brake only on the actions of the Federal Government, in due course the actions of the State Governments also came to be judged by that touchstone.⁹ As a result, the American media operate under a legal environment that frowns on censorship or other forms of controls. But the seemingly absolute nature of free speech in the US may be a bit misleading. For even the US courts have not ruled out the possibility of prior restraint (as censorship is properly called) entirely. In *Near v. Minnesota*,¹⁰ the US Supreme Court hinted at this possibility, and in *Dietemann v. Time Inc.*,¹¹ the court countenanced the imposition of restrictions on certain “news gathering” techniques. Furthermore, American judges have upheld the principle that the broadcast media may be subject to a higher degree of state regulation than the press.¹²

The position adopted by the Indian courts on the importance of free speech – and, in particular, of a free press – is no less interesting. In a landmark judgment

⁷ Judgment in *Lüth*, 7 BverfGE 198, 208 (1958).

⁸ The material part of the First Amendment to that Constitution reads: “Congress shall make no law ... abridging the freedom of speech, or of the press...”

⁹ See, e.g. *Gitlow v. New York* 268 US 652 (1925).

¹⁰ 283 US 697 (1931).

¹¹ 449 F 2d 244 (1971).

¹² *FCC v. Pacifica Foundation* 438 US 726 (1978).

delivered in 1958,¹³ the Supreme Court of India ruled that, while the press could not claim any immunity from the general laws of the country,

[l]aws which single out the press for laying upon it excessive and prohibitive burdens which would restrict the circulation, impose a penalty on its right to choose the instruments for its exercise or to seek alternative media, prevent newspapers from being started and ultimately drive the press to seek Government aid in order to survive, would therefore be struck down as unconstitutional.

As a result, if the Government passed a law which, say, imposed a 90 per cent tax on the profits of all businesses (including newspaper companies), and if that tax had the effect of driving a newspaper into bankruptcy – as it would almost inevitably have – then, although the tax may be constitutional in relation to many other businesses, the fact that it had the clear and inevitable effect of curtailing freedom of expression would mean that the measure would be deemed unconstitutional.

A strong constitutional guarantee on freedom of expression can therefore be an effective safeguard against all manner of assaults, direct and indirect, on the media. It would come in particularly handy against populist politicians who, intolerant of any criticism that may come their way, begin to rail against “press barons” and “media monopolists”, and call for a muzzling of the media on ostensibly public interest grounds, as they often do in many developing (and, indeed, developed) countries. Such calls do have a superficial appeal, but deeper reflection will reveal how misleading and dangerous they can be. For the unavoidable truth is that newspapers and other media outlets, in order to be free and independent, have to be economically viable, i.e. profitable. The moment a newspaper or television station becomes economically unviable, it exposes itself to pressures from outside, whether these pressures are of a political or other nature.

Which is not to deny that concentration of media power in one or a few hands can be harmful to freedom and democracy. The antidote to such concentration of power is not state control of the media, but pluralism and greater competition. Greater competition also ensures greater consumer choice, which goes hand in hand with democracy. In countries where this simple truth has been ignored, the result has been ruin and misery. The lessons for Burma are obvious.

Challenges of new technologies

The advent of newer communication technologies has, of course, meant that the challenges for the architects of media regulation have increased manifold. Indeed, some analysts have begun expressing scepticism about the continuing relevance of traditional regulatory frameworks to the new media environment. Sample these

A strong constitutional guarantee on freedom of expression can therefore be an effective safeguard against all manner of assaults, direct and indirect, on the media.

¹³ *Indian Express Newspapers Ltd. v. Union of India* AIR 1958 SC 578.

observations by the authors of a 1997 study on the subject:

Uncertainty about the regulatory framework applies to traditional legal forms such as criminal law; much difficulty has already been encountered in attempts to control pornography on the Internet. Other forms of law also face difficulties. For example, attempts to ensure diversity of media ownership on democratic grounds are increasingly questioned as being unnecessary in a world of new diversity of output, as being unenforceable, and as hindering the competitive opportunities on a world scale. Even more strikingly, attempts to guarantee universal provision of public services including broadcasting and telecommunications have been criticised as reflecting an outdated and complacent unitary conception of national culture and as neglecting consumer sovereignty through treating the citizen as a passive recipient of public services defined paternalistically. In a radically different area, intellectual property law is a cornerstone of the law relating to on-line services and especially the Internet, and one of the major debates surrounding recent developments in the media is the extent to which in its existing form it can serve a useful purpose in the common digital environment. Finally, as some of these examples vividly show, the historic concentration on the use of law by national authorities to resolve national problems has become outdated with the development of industries to which national boundaries are irrelevant; the very liberation that this represents, it is claimed, makes regulation a historic throwback rather than a practical task for the future.¹⁴

This “end of regulation” hypothesis may be a bit overstated but, even so, the challenges posed by the new technologies cannot be ducked. Those who may have responsibility for these matters in a democratic Burma will have to grapple with them in addition to bringing the national media and telecommunication infrastructure up to scratch. Clearly, there will be a high premium placed on prioritisation, given both the enormity of the task and the inevitable resource constraints that are bound to arise.

Conclusion

All this will call for some hard-headed decision-making. There will be no dearth of advice from the burgeoning army of foreign “experts” who will inevitably converge on Rangoon, bearing their respective prescriptions for a quick fix. While a lot of this advice will doubtless be valuable, some of it may not, given the peculiar conditions and needs of Burmese society. Resisting unsuitable advice will therefore be an unavoidable part of the reform process. All said and done, providing for free media is not just a case of institutional design – it involves a complex web of factors, not least the willingness and the ability of a State to ensure an environment in which the

¹⁴ David Goldberg, Tony Prosser and Stefaan Verhulst, *Regulating the Changing Media: A Comparative Study* (Oxford: Clarendon Press, 1998), at pp. 3-4.

legal and constitutional guarantees for free speech are matched by a high degree of public awareness of, and commitment to, democratic pluralism.

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Perspective on Federalism and the Future Constitution of Burma

Interview with Colonel Zin Kyone, the General Secretary of the National Democratic Front (NDF)

□ Question: Does the constitution play a significant role in a peaceful political transition?

○ Answer: The constitution is the apex of the state and the paramount of law; it may be regarded as the soul of the country. As such, the constitution is important not only in the process of peaceful transition but also in laying the down the foundation for the political transformation. Similar to the period that we established our union in the initial stage, we have to ask the will of the people in regards to the fundamental principles for the establishment of a union. Only when a constitution is drawn up in line with those principles, will we be able to reconstruct a peaceful nation.

□ What sort of constitution is suitable for Burma?

○ The constitution will be the most suitable one if it is drawn up in line with the desire of the entire ethnic nationalities and principles that will be compatible with their own particularities. As Burma is composed of various ethnic nationalities, I am confident that it will be the most suitable constitution in the event that it is based on the equality, self-determination and democracy among those nationalities.

□ Would you like to apply the 1947 Constitution for future Burma?

○ I assume that the 1947 Constitution will not be applied to a new Burma given that it is a fake federal constitution that lacks equality and self-determination. In case it is to be adopted again, it requires to be amended. The 1947 Panlong agreement and its principles; the draft constitution approved by the AFPFL¹ in May 1947; the manifesto of the amendment of constitution by Taung Gyi conference in February 1961; the draft constitution of Union of Burma by the UNLD; the Manaplaw agreement in 1992; the Mae-tha-raw-ha agreement in 1997; the draft constitution of the future Federal Union of Burma by the NCUB; and other state constitution

drafts prepared by the ethnic nationalities should be the basis for considering the amendment of the 1947 Constitution.

□ Would you like to use the 1947 Constitution with amendment (or) what sort of constitution do you want to apply?

○ In the event that the 1947 Constitution is amended based on the principles of equality, self-determination and democracy, it would be acceptable. In recent history, the ethnic nationalities have endeavored to amend the 1947 Constitution. However, the military dictators led by General Ne Win responded to it by staging a coup. As a consequence, the underlying political problems are still going on and can not be solved. In order to transform Burma into a peaceful nation, the existence of a federal constitution – that will guarantee equality, self-determination, and democracy – is of paramount importance. To achieve this, a new federal constitution can be drawn up. As another alternative, the 1947 Constitution can also be amended.

□ 1990 May election result and what kind of constitution is needed for Burma?

○ According to the result of the 1990 May election, there is only one house in parliament. During the time of the 1990 May election, the SLORC² had no specific constitution. With reference to that election result, a unitary constitution that is appropriate for a homogenous society might emerge. However, it will not fit for our union in which the various ethnic nationalities reside. The winning party in the 1990 May election should convene a National Convention and draw up a new constitution in accordance with the desire of the entire ethnic nationalities (or) the 1947 Constitution should be amended. I also assume that the new election is required with the new constitution, which comes out from that National Convention.

□ What do you think the role of the military should be in the constitutional drafting process?

○ The SPDC³ is not a legitimate government as it has got into power by staging a coup. As such, the involvement of an illegitimate government in the constitution making process is not legitimate. As a result, the constitution drawn up by the SPDC will certainly be illegal. In the case that the people provide a mandate to the military to be involved in the constitution drafting process, it will be fine.

□ Can the Unitary State constitution solve the problems?

○ The constitution drawn up by the entire people, with their own free will, could resolve the problems. All ethnic nationalities who are living in Burma have never believed that the Unitary State constitution is suitable for Burma. I am sure that the Unitary State constitution cannot solve the problems we currently encounter.

□ Is it appropriate that the ethnic Burman, as a state (province), participate in the composition of the federal Union? If it is the case, what is your opinion on the existence of the National Assembly and People's Assembly?

○ In a future Burma, the ethnic Burman should obtain the status of a state because according to the Panglong accord, there was no discrimination, regardless of population – whether be it more or less – and of areas of a state – whether be it large or small – to compose a Federal Union.

The congress of the Federal Union should be composed of the Upper House and Lower House. The Lower House stands for the interest of the whole people while the Upper House is for the state (province) interest. As we practice democracy, it will be necessary to create an institution for the people's interest, as the People's Assembly, and also another institution to protect the respective state interest, as the National Assembly. The National Assembly should be composed of the equal representatives from each state and the People's Assembly should be composed of the representatives based on population. Between the two houses, there should be a check and balance system, mutual adjustment, and no interference with each other.

□ How would you like to adopt a new Burma constitution, as a Federation (or) Confederation and why?

○ The constitution for a future Burma should come into existence as a Federal constitution composed of the national states that will have the right to exercise equality and self - determination. This is because, during the past five decade long civil war, the ethnic nationalities lost their rights of equality and self-determination. I am confident that only the constitution of the Federal Union guarantees the ethnic nationalities' the rights, which were lost in the past.

□ As the General Secretary of the National Democratic Front, what is your opinion on self-determination?

○ Self-determination is the right of an ethnic nationality; accordingly, I am convinced that any ethnic nationality can live within a union with their own free will and if they wish to live as an independent state, they can. I assume that every nationality should have this right. Any ethnic nationality should stand and choose the best by their own desire.

□ What do you think about the official language in the Federal constitution?

○ In the Federal constitution, English, Burmese and other ethnic nationalities' languages should be the official ones. I assume that English and other languages, which are used in the respective states should be provided as official languages in the State Constitution.

□ In the constitution should any religion be mentioned as state religion?

○ I assume that it is not required to prescribe any religion as state religion. Everyone should have the right to exercise his or her own religious belief freely. It should be

enough if constitution guarantees this fundamental right. The constitution should not provide the privilege to any religion.

Endnotes

¹ AFPFL - Anti-fascist People's Freedom League

² SLORC - The State Law and Order Restoration Council

³ SPDC - The State Peace and Development Council

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