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.

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1 The 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 Depayin."
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 K y i'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 K y i 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 K y i'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, K hamti 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 eyewitnesses, 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 mas-
sacre. 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 indepen-
dent 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 func-
tion 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 Rawanda 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.