

The Role of Political Prisoners in the National Reconciliation Process

Assistance Association for Political Prisoners



Publishing & Distribution



The Assistance Association for Political Prisoners (Burma) (AAPP) is dedicated to providing humanitarian assistance to political prisoners in Burma, and their families. AAPP documents the number of political prisoners currently held in interrogation centres, prisons and labour camps across the country, and the human rights violations carried out against them by the ruling authorities. AAPP also monitors conditions in prisons.

March 2010

1,000 copies

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Acknowledgements

The Assistance Association for Political Prisoners (Burma) (AAPP) would like to thank:

- o The former political prisoners who shared their personal experiences with us.
- o The National Democratic Institute for International Affairs (NDI), for their generous support which made this publication possible. The views expressed herein are those of AAPP and do not necessarily reflect the views of NDI.
- o The staff at AAPP for carrying out translation and research.
- o Charlotte, assistance with research.
- o Rachel, for assistance with authoring the report.
- o Hannah, for assistance with editing the report.
- o Ye Tun Oo for the design and layout.
- o Thiha Mg Mg for the cover design.
- o James, for the use of his images and for his ongoing support through his photography project *Even Though I'm Free I Am Not*, which documents former political prisoners from Burma forced to live in exile all over the world.

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I. EXECUTIVE SUMMARY AND RECOMMENDATIONS

For decades, the people of Burma have been striving for peace, democracy and the full realization of their human rights. Recognizing this goal, political parties like the National League for Democracy (NLD) and ethnic nationality groups have attempted to engage in a process of national reconciliation, but the ruling military regime (known as the State Peace and Development Council, SPDC) has resisted this at every turn. At its heart, ‘national reconciliation’ is resolution of the conflicts brought about by the struggle for democracy, human rights, equality, and self-determination that have been ongoing since independence. Burma’s 2,100 plus political prisoners represent that struggle, yet the SPDC continues to deny their existence.

This report sets out the vitally important role of Burma’s political prisoners in a process of national reconciliation, leading to democratic transition. A genuine, inclusive process of national reconciliation is urgently needed to resolve the current conflicts and make progress towards peace and democracy.

A crucial first step in a national reconciliation process is official recognition of ALL Burma’s 2,100 plus political prisoners, accompanied by their unconditional release. This is an essential part of trust-building between the military rulers, democratic forces, and wider society. In order for progress towards genuine national reconciliation and democratic transition to be sustainable, ordinary people across Burma must believe in the process. As long as activists remain in prison or continue to be arrested for voicing their political dissent, the people of Burma will have no trust in any political process proposed by the SPDC.

In practice, a national reconciliation process must involve an inclusive tripartite dialogue between the ruling military regime, the National League for Democracy and representatives of all ethnic nationality groups to discuss the unification of Burma into a peaceful federation that fully respects the rights of all ethnic nationality groups.

High-level dialogue between the ruling military generals and imprisoned political leaders like Daw Aung San Suu Kyi, Shan Nationalities League for Democracy leader U Khun Htun Oo and other ethnic nationality representatives is very important. Imprisoned national figures like 1988 student leader Min Ko Naing, comedian Zarganar and monk leader U Gambira, who are widely admired across Burma, can help unite ordinary people behind the process of dialogue if given the opportunity to do so.

Political prisoners have been jailed under draconian laws for their belief in democracy, human rights, equality and self-determination, and are committed to those principles. At a local level, released political prisoners can also add value to the dialogue process once it begins. Many of them are community leaders and respected figures (monks, labour activists, lawyers, teachers, doctors, journalists), held in high regard in their local areas all across Burma. They can lend much-needed encouragement and support to the dialogue process taking place at the national level.

The junta's 'Roadmap to Democracy' is designed to legitimize military rule behind a smokescreen of 'democratic reform'. It does not include the release of political prisoners or a dialogue for national reconciliation, crucial steps in a transition to democracy. Steps in the junta's Roadmap, such as the reconvening of the National Convention and the constitutional referendum, have been accompanied by the arrests of political activists.

The National Convention and constitution-drafting process have marginalized democratically-elected representatives, ethnic nationality groups, pro-democracy activists and ordinary citizens, despite efforts to participate in good faith and to shape a constitution founded on principles of democracy, human rights, equality and self-determination.

The resulting 2008 Constitution is a barrier to national reconciliation and democratic transition because it entrenches military rule, marginalizes ethnic nationalities, and undermines human rights. It also excludes current political prisoners from participation in elections on grounds of their imprisonment.

The SPDC's planned 2010 elections will be based on the 2008 Constitution. Without tripartite dialogue for national reconciliation - with the official recognition and unconditional release of all political prisoners as a crucial first step - elections will not be a solution for Burma. As part of tripartite dialogue, a comprehensive review of the 2008 Constitution to address issues of the exclusion of political leaders from positions of power, self-determination, human rights, impunity, and the independence of the judiciary is vitally important. In addition, elections can not be considered 'free' or 'fair' if they are held without erasing the criminal records of political prisoners to guarantee their right to participation, after their release from prison. In practice this means that, if they choose to do so, they are able to stand as political candidates, vote in independently-monitored free and fair elections, join political parties, and form political parties or civil society groups, without any restrictions or qualifications from authorities.

There have been six separate amnesties for prisoners since November 2004, mainly to appease the international community at perceived critical junctures. According to the SPDC's own figures, 45,732 prisoners were released under those amnesties, but AAPP statistics show that only 1.3% of them were political prisoners.

I could not accept releasing me under section 401 of the Criminal Procedure Code after putting me in prison longer than I should have stayed.... I was released in overdue time after serving my full prison term. But they wanted to release me under their scheme [Section 401]. I argued with them on this point the whole of yesterday... I told them I want to be released as a political prisoner.

U Win Tin, founding member of the NLD, released under an amnesty in September 2008.

The SPDC uses Section 401 of the Criminal Procedure Code as the legal mechanism for those amnesties. Clause 1 of Section 401 grants the President of the Union power to suspend a sentence, while Clause 3 gives power to cancel that suspension and order re-arrest of a person at any time without a warrant, requiring that he or she must serve

the remainder of the original sentence. These powers lie with the executive and not the judiciary.

Presently, once a former political prisoner, is released they face ongoing human rights abuses. They are constantly under watch by Military Affairs Security, commonly known as Military Intelligence (MI) and their network of spies and informers. They regularly face arbitrary arrest, and they and their families are harassed and threatened. They are denied education and employment opportunities. The pervasive climate of fear

MI came to my house, and watched me. They followed me when I left the house. If I went anywhere, they needed to inform someone, every time. I felt disappointed, but not afraid. I was worried it would be a problem for other people, mainly my friends. Even today there is still surveillance on my house.

Former political prisoner Thida Thway, released in 2002.

after decades of military rule means that friends and neighbours are sometimes afraid to associate with ex-political prisoners, in case they themselves are arrested. The authorities do their utmost to prevent former political prisoners from pursuing political activism. Many do continue their activism, but run the risk of re-arrest and imprisonment under the terms of Section 401.

A general amnesty for all political prisoners motivated by genuine political will on the part of the SPDC is needed. This can pave the way for inclusive tripartite dialogue for national reconciliation. As long as there are political prisoners, there can be no national reconciliation or democratic transition in Burma.

Recommendations to the International Community

The international community must take a united stand to publicly press the ruling military regime to immediately take these steps:

1. Officially recognize all political prisoners and unconditionally release them under a genuine amnesty;
2. Begin an inclusive tripartite dialogue for national reconciliation with Daw Aung San Suu Kyi, U Khun Htun Oo and representatives of other ethnic nationality groups;
3. Undergo a comprehensive review of the 2008 Constitution as part of tripartite dialogue for national reconciliation, to address the following issues in particular:
 - a) The exclusion of political leaders from positions of power
 - b) Self-determination and equality for ethnic nationality groups
 - c) Independence of the judiciary
 - d) Protection of human rights
 - e) Impunity
4. Erase criminal records of all political prisoners to enable them to fully participate in democratic transition without restrictions;
5. Cease ALL human rights violations against the people of Burma.

II. BACKGROUND

The people of Burma continue to suffer from widespread, systematic human rights violations under the military regime. These include curtailing of civil and political rights, such as freedom of expression, association and assembly, as well as the denial of economic, social and cultural rights. Political activists are routinely and arbitrarily imprisoned and face torture, ill-treatment, denial of medical care and transfer to remote prisons.¹ Other serious violations, particularly in ethnic areas where there is ongoing conflict, include forced labour, sexual violence, torture, extrajudicial killings, and disappearances. In eastern Burma around 500,000 people are estimated to be internally displaced. There are now at least 140,000 refugees in nine camps along the Thailand-Burma border, and 50,000 refugees from Chin State in eastern India.²

People across Burma are facing a deepening human rights crisis, as elections in the country loom.³ The elections are step five in the military regime's so-called 'Roadmap to Democracy',⁴ designed to legitimize military rule behind a smokescreen of 'democratic reform'.⁵ Neither dialogue for national reconciliation nor the release of political prisoners are part of the regime's Roadmap.

Other steps in the Roadmap have concluded at times of political unrest and national crisis in the country. In September 2007 the regime announced that its National Convention process - charged with laying down the principles of a new constitution - had concluded, even as nationwide protests against military rule escalated. A massive fuel price hike in August had triggered peaceful protest marches, initially led by members of prominent dissident group the 88 Generation

¹ See *Burma's Prisons and Labour Camps – Silent Killing Fields*, AAPP, May 2009.

² See *World Report 2010: Events in 2009*, Human Rights Watch, January 2010.

³ For a summary of the human rights situation in Burma in 2009, see *World Report 2010: Events in 2009*, Human Rights Watch, January 2010.

⁴ Seven-step roadmap: (1) Reconvening of the National Convention that has been adjourned since 1996. (2) After the successful holding of the National Convention, step by step implementation of the process necessary for the emergence of a genuine and disciplined democratic system. (3) Drafting of a constitution in accordance with the basic principles and detailed principles laid down by the National Convention. (4) Adoption of the constitution through national referendum. (5) Holding of free and fair elections for Pyithu Hluttaws (legislative bodies) according to the new constitution. (6) Convening of Hluttaws attended by Hluttaw members in accordance with the new constitution. (7) Building a modern, developed and democratic nation by the state leaders elected by the Hluttaw; and the government and other central organs formed by the Hluttaw.

⁵ The roadmap was announced in 2003, in response to an international outcry over the Depayin massacre in May that year when around 70 NLD members were killed in an ambush on Daw Suu's convoy by members of the junta-backed Union of Solidarity and Development Association.

Students.⁶ Following their arrests, hundreds of thousands of Buddhist monks and ordinary citizens gradually took to the streets across the country to continue the protest, in what became known as the Saffron Revolution. The demonstrations were violently suppressed.⁷

In February 2008 the junta announced that Step Four of the Roadmap, a constitutional referendum on the unilaterally-drafted Constitution, would take place in May that year followed by elections in 2010.⁸ On 2 and 3 May 2008, Cyclone Nargis struck Burma, leaving almost 140,000 dead or missing in its wake.⁹ For three weeks, the junta rejected international assistance and blocked access to the Irrawaddy delta, the worst-affected region. Rather than focusing on helping its own people deal with the biggest natural disaster in the country's history, the regime pressed ahead with its constitutional referendum, claiming that 92% of voters approved it.

Since the Saffron Revolution, the number of political prisoners has almost doubled and now stands at over 2,100.¹⁰ Lengthy sentences of up to 104 years have been handed down to political dissidents by the regime's kangaroo courts in unfair trials.¹¹ Four political prisoners died in 2009, bringing the total number of deaths since 1988 to 143.¹²

⁶ See **III. NATIONAL RECONCILIATION AND POLITICAL PRISONERS** for more information about the 88 Generation Students.

⁷ Thousands of protestors were subjected to arbitrary arrest, and an untold number were injured at the hands of security forces. UN estimates put the death toll at 31, although the true figure is likely to be considerably higher.

⁸ Steps 4 and 5 in the Seven-Step Roadmap to Democracy.

⁹ *Post-Nargis Joint Assessment Report*, July 2008.

¹⁰ See *The Future In The Dark: The Massive Increase in Burma's Political Prisoners, September 2008*, AAPP and US Campaign for Burma.

¹¹ 21 year-old member of the All Burma Federation of Student Unions (ABFSU) Bo Min Yu Ko was sentenced to a total of 104 years in prison on 3 January 2008. See also AAPP's monthly chronology reports, September 2008 to date at www.aappb.org.

¹² Political prisoners U Arnanda (a monk), Salai Hla Moe, Saw Char Late, and Tin Tin Htwe a.k.a. Ma Pae died in 2009.

III. NATIONAL RECONCILIATION AND POLITICAL PRISONERS

A genuine, inclusive process of national reconciliation is urgently needed to resolve the current conflicts and make progress towards peace and democracy. Political prisoners represent the struggle for democracy, human rights, equality and self-determination. A crucial first step in a national reconciliation process is official recognition of ALL Burma's 2,100 plus political prisoners, accompanied by their unconditional release. This is an essential part of trust-building between the military rulers, democratic forces, and wider society. In order for progress towards genuine national reconciliation and democratic transition to be sustainable, ordinary people across Burma must believe in the process. While activists remain in prison or continue to be arrested for voicing their political dissent, the people of Burma will have no trust in any political process proposed by the SPDC. There can be no national reconciliation or democratic transition in Burma, as long as there are political prisoners.

A brief history since 1947



The dream of a unified and free Burma has always haunted me... We who are gathered here tonight are engaged in the pursuit of the same dream... If we are divided, the Karen, the Shan, the Kachin, the Chin, the Burman, the Mon and the Arakanese, each pulling in a different direction, the Union will be torn, and we will come to grief. Let us unite and work together.

General Aung San, regarded as the father of independence, speaking on the eve of the historic Panglong Agreement in February 1947.

As part of the drive to seek independence from British colonial rule, General Aung San and representatives from the Shan, Kachin and Chin ethnic nationality groups signed the Panglong Agreement.¹ The Agreement aimed to establish a federal Union based on the principles of equality and self-determination for ethnic nationality groups. Just a few months later General Aung San and other key independence leaders like Sao Sam Htun, a Shan, and Mahn Ba Khaing, a Karen, were assassinated. The country continued on its course of independence, despite the loss of these key figures. A new constitution came into effect on 2 September 1947 and full independence was realized in 1948, when a parliamentary democracy was established. However, the new constitution was rushed through to completion, and did not fully reflect the vision of the Panglong signatories.² Territorial issues – particularly for Karen State – were never resolved.³ The trust that had been established under General Aung San between the Burman majority and ethnic nationality groups began to erode away.

Many ethnic nationality groups began to look to other solutions to their aspirations for equality and self-determination. Some formed their own armies, and by 1960, numerous groups were in armed conflict with the Tatmadaw, the Burmese army.⁴ The military coup in 1962 led by General Ne Win firmly established military rule in Burma. During the 1960s, Ne Win's regime implemented the 'Four Cuts' policy, designed to cut off armed ethnic nationality groups from food, money, intelligence and recruits.⁵ The policy, still in practice today, has led to widespread and systematic human rights violations against civilian populations in ethnic nationality areas, as part of efforts to control them and break any links with armed resistance groups. This includes rape and sexual violence, torture and extrajudicial killings, forced displacement, land confiscation, destruction of villages, arbitrary taxation and restrictions on freedom of movement.⁶

Popular uprisings in 1988 led by the student movement were brutally crushed by the military, and an estimated 3,000 people were killed. In the aftermath of the reprisals, many students fled to Burma's jungles.

¹ Not all ethnic minorities were invited to the Panglong Conference and the Karen attended only as observers. See *Living Silence: Burma Under Military Rule*, Christina Fink, 2001.

² See *The New Panglong Initiative: Re-Building the Union of Burma*, Ethnic Nationalities Council, 2002 and *Ethnic tension and minority perspective on Burma's problems* by Nehginpao Kipgen, Georgetown University Washington DC, April 2008.

³ See *Living Silence: Burma Under Military Rule*, Christina Fink, 2001.

⁴ *Crimes in Burma*, the International Human Rights Clinic at Harvard Law School, May 2009.

⁵ See *Living Silence: Burma Under Military Rule*, Christina Fink, 2001.

⁶ See *Crimes in Burma*, the International Human Rights Clinic at Harvard Law School, May 2009.

Some joined ethnic nationality armed groups while others established the All Burma Students Democratic Front, also joining the armed struggle against military rule.

The junta declared martial law and promised to hold elections, which took place in 1990. Despite restrictions on campaigning and the detention and imprisonment of political leaders, the elections themselves were conducted openly, and the National League for Democracy (NLD) party led by General Aung San's daughter Daw Aung San Suu Kyi won a landslide victory with 60% of the popular vote and over 80% of the parliamentary seats.⁷ But the military refused to transfer power to the democratically-elected government, and the struggle for democratization and national reconciliation continues today.

Armed conflict continued throughout the 1990s as the regime's army sought to gain control of border regions, and some ethnic armed groups signed ceasefire agreements.⁸ The numerous military campaigns against ethnic nationality groups, characterized by serious human rights violations, have led to the current situation.⁹ As well as an estimated half a million internally-displaced people in eastern Burma, there are at least 140,000 refugees in nine camps along the Thailand-Burma border, and 50,000 refugees from Chin State in eastern India.¹⁰

National reconciliation: an overview

A national reconciliation process for Burma means resolving the conflicts brought about by the struggle for equality, self-determination and democratization that have been ongoing since independence. National reconciliation requires the unification of Burma into a peaceful federation that fully respects the rights of all ethnic nationality groups. In practice, the process must involve an inclusive dialogue between the ruling military regime, the National League for Democracy and representatives of all ethnic nationality groups to discuss the future of a unified Burma. Resolving the current conflicts is crucial in order to establish a peaceful, democratic and developing country.

⁷ Daw Aung San Suu Kyi and NLD Vice-Chairman U Tin Too were confined to house arrest under Article 10(a) of the State Protection Act, also known as the Law to Safeguard the State from the Dangers of Destructive Elements.

⁸ *Crimes in Burma*, the International Human Rights Clinic at Harvard Law School, May 2009.

⁹ See *Crimes in Burma*, the International Human Rights Clinic at Harvard Law School, May 2009.

¹⁰ Figures from *World Report 2010: Events in 2009*, Human Rights Watch, January 2010.

To implement national reconciliation all the people of Burma need to have:

- a vision of a better future for their country
- mutual respect and recognition between the different ethnic nationality groups
- equality for all and respect for all human rights
- commitment to peaceful solutions
- a desire to live together peacefully
- harmonised personal and national interests

Numerous attempts have been made at both dialogue for national reconciliation and proposals for federal solutions to issues of equality and self-determination.¹¹ The first face-to-face meeting between Daw Aung San Suu Kyi, Senior General Than Shwe and then Lt General Khin Nyunt took place in September 1994, but talks at that level did not last long.¹²

‘Secret’ high-level talks between Daw Aung San Suu Kyi and the regime resumed in October 2000, shortly after she was placed under house arrest again.¹³ The NLD position was that ethnic nationality groups should be included in the dialogue for national reconciliation, once initial talks to build confidence had reached a crucial stage of substantive dialogue.¹⁴ In May 2002, Daw Suu¹⁵ was released from house arrest. At the time, she said, “We believe the ethnic nationalities know we are sincere towards them, and we are very thankful to them for their trust in us and the support they give us.”¹⁶

¹¹ For more information on proposals for federal solutions to issues of equality and self-determination, see **IV. THE ‘ROADMAP TO DEMOCRACY’: A BARRIER TO NATIONAL RECONCILIATION.**

¹² See *Dialogue Between Military Government and NLD*, the Irrawaddy, 1 January 2003.

¹³ Daw Aung San Suu Kyi has been held under house arrest July 1989 ó July 1995, and September 2000 ó May 2002. She was detained between May ó September 2003 following the May 2003 Depayin massacre, and then held under house arrest between September 2003 and May 2009. She was put on trial in May 2009, found guilty of breaking the terms of her house arrest in August 2009 and initially sentenced to three years with hard labour, ommuted to 18 months house arrest by Senior General Than Shwe.

¹⁴ See *New Page, Old Story*, ALTSEAN-Burma, September 2002.

¹⁵ -Daw is an honorific term of address for older women in the Burmese language. Burmese pro-democracy activists choose to use the name -Daw Suu as a mark of respect and affection.

¹⁶ See *Aung San Suu Kyi’s Party Moving ‘Step By Step’ with Junta*, RFA, 17 May 2002.

However, the pace of the talks was slow and barely got beyond the confidence-building stage.¹⁷ One of the key stumbling blocks was the release of political prisoners. Although the regime released approximately 550 political prisoners between October 2000 and November 2002, most had never been formally charged, or had already finished or almost completed their sentences.¹⁸ They were also conditionally released under the terms of Section 401 of the Criminal Procedure Code, and faced the possibility of re-imprisonment if they resumed their political activities.¹⁹ In addition, the authorities continued to arrest political activists during the same period.²⁰

In May 2003 hopes for a genuine process of dialogue for national reconciliation, that could later be expanded to include ethnic nationality representatives, were dashed. While Daw Aung San Suu Kyi and members of the NLD were on a political organizing tour in Sagaing Division, around 70 NLD members were reportedly killed in an ambush on their convoy by members of the junta-backed Union of Solidarity and Development Association. Daw Suu and NLD Vice-Chairman U Tin Oo were taken into ‘protective custody’ and talks broke down. Shortly afterwards, the regime announced its ‘Roadmap for Democracy’ which made no mention of dialogue for national reconciliation or the release of political prisoners.²¹

In 2006 the NLD offered to recognize the military regime as the legitimate transitional government, if the junta freed Daw Aung San Suu Kyi and convened Parliament in accordance with the 1990 election results, a proposal which won widespread support from ethnic groups and pro-democracy groups inside Burma. However the regime rejected this proposal for dialogue out of hand.²²

A crucial first step in a national reconciliation process – before genuine, inclusive dialogue can take place - is official recognition of all Burma’s 2,100 plus political prisoners, and their unconditional release. This is an essential part of trust-building between the military rulers, democratic forces, and wider society.

¹⁷ See *The Talks: A Two-Year Chronology*, the Irrawaddy, 1 February 2004.

¹⁸ See *Statement on the Conditional Release of 115 Political Prisoners in Burma*, AAPP, 26 November 2002.

¹⁹ For more information about Section 401 of the Criminal Procedure Code, see

VI. AFTER RELEASE FROM PRISON: ONGOING HUMAN RIGHTS ABUSES.

²⁰ See *Statement on the Conditional Release of 115 Political Prisoners in Burma*, AAPP, 26 November 2002 and *The Talks: A Two-Year Chronology*, the Irrawaddy, 1 February 2004.

²¹ See **IV. THE ‘ROADMAP TO DEMOCRACY’: A BARRIER TO NATIONAL RECONCILIATION.**

²² See *2010 Elections: A Recipe For Continued Conflict*, ALTSEAN-Burma, October 2009.

High-level dialogue between the generals and imprisoned political leaders like Daw Aung San Suu Kyi, Shan Nationalities League for Democracy leader U Khun Htun Oo²³ and other ethnic nationality representatives is very important in order to move forward in a process of national reconciliation. Imprisoned national figures like 1988 student leader Min Ko Naing, comedian Zarganar and monk leader U Gambira, who are widely admired across Burma, can help unite ordinary people behind the process of dialogue if given the opportunity to do so.

Political prisoners have been jailed for their belief in democracy, human rights, equality and self-determination, and are committed to those principles. At a local level, released political prisoners can also add value to the dialogue process once it begins. Many of them are community leaders and respected figures (monks, labour activists, lawyers, teachers, doctors, journalists), held in high regard in their local areas all across Burma. They can lend much-needed encouragement and support to the dialogue process taking place at the national level.

The role of imprisoned political leaders and national figures

Imprisoned political leaders Daw Aung San Suu Kyi and U Khun Htun Oo have a particularly important, leading role to play in the national reconciliation process. They command the respect of ordinary people across Burma. Similarly, other national figures who are widely admired - and can help unite people behind a national reconciliation dialogue - include 1988 student leader Min Ko Naing; comedian and film-maker Zarganar; and monk leader U Gambira.

Daw Aung San Suu Kyi

Nobel Peace Prize laureate and leader of the NLD Daw Aung San Suu Kyi has followed in her father's footsteps. In 1988 she returned to Burma to look after her sick mother. After the crackdown against popular protests in August that year, she made her first public appearance and addressed a crowd of several hundred thousand at the Shwedagon pagoda in Rangoon. She went on to co-found the NLD and embarked on a nationwide campaign tour, visiting many ethnic nationality areas. Like her father before her, she is trusted by the majority of ethnic nationality groups. The military regime has done its best to sideline her, keeping her under house arrest for many years. The 2009 sham trial of Daw Aung San Suu Kyi on trumped-up charges of breaking the terms of her house arrest, after US citizen John Yettaw intruded at her

²³ -Uø is an honorific title used for a mature man in a senior position, to convey respect.

lakeside home, was a blatant attempt to saddle her with a criminal record. Despite being kept out of the public eye, Daw Suu is still a much-loved leader across Burma. When she was briefly released from house arrest in 2002, her tour of Upper Burma once again drew huge crowds of tens of thousands. During her recent trial, people circulated photos of her and collected signatures calling for the release of all political prisoners, including Daw Suu.²⁴

The release of political prisoners is the most important thing for all those who truly wish to bring about change in Burma. We insist that the release of political prisoners is necessary if the process of reconciliation is to go forward to a point where it becomes truly irreversible.²⁵ Daw Aung San Suu Kyi, General Secretary of the NLD, currently sentenced to 18 months' house arrest under Article 22 of the 1975 State Protection Act.²⁶



U Khun Htun Oo

The Shan Nationalities League for Democracy (SNLD) led by U Khun Htun Oo won 23 seats in Shan State in the 1990 elections, making it the most successful party after the NLD. U Khun Htun Oo is the grandson of the late U Hkun Htee, one of the Shan leaders who signed the Panglong Agreement. He has become one of the country's most prominent political figures after he met with UN envoys several times, and was outspoken about his desire for a peaceful and democratic Burma prior to his arrest in 2005.²⁷

²⁴ As part of the global Free Burma's Political Prisoners Now! Campaign led by AAPP and the Forum for Democracy in Burma, which ran from 13 March to 24 May 2009, 40,000 signatures were collected inside Burma.

²⁵ Aung San Suu Kyi speaking in an interview with ALTSEAN-Burma, August 2002.

²⁶ Daw Suu was initially sentenced to 3 years with hard labour, but this was immediately commuted to 18 months house arrest by Senior General Than Shwe in an effort to deflect international criticism of the conviction. Article 22 of the 1975 State Protection Act is also known as the Law to Safeguard the State from the Dangers of Destructive Elements

or For a full political prisoner profile of Daw Aung San Suu Kyi, please see http://www.aappb.org/bio_pdf/Aung_San_Su_Kyi_bio_1_Oct_2009.pdf

²⁷ See *Burma's Influential Figures*, Irrawaddy Magazine, December 2003.

The SNLD and the NLD have worked closely together and were co-signatories²⁸ of the Bo Aung Kyaw Road declaration in August 1990, which made a commitment to federalism and called for a new process to establish the principles for a new constitution that would recognize the rights of all ethnic nationalities.²⁹

At the time talks were taking place between Daw Aung San Suu Kyi and representatives of the military regime, U Khun Htun Oo made it clear that ethnic nationalities trusted Daw Suu to open a dialogue that would lead to national reconciliation, but also that ethnic nationalities wanted to represent their own views when the time was right.



Two-way talk [between Daw Aung San Suu Kyi and the military regime] is important before the tripartite dialogue. When there are reconciliation conditions, we want talks to be tripartite. I hope it will happen.³⁰ U Khun Htun Oo, speaking in 2001.

In 2002, U Khun Htun Oo was instrumental in establishing the United Nationalities Alliance (UNA)³¹, with the aims of making progress towards tripartite dialogue and setting up a genuine federal union in which democracy, equality, self-determination and human rights prevail among all ethnic nationalities.³² U Khun Htun Oo is in poor health and is currently serving a 93-year sentence on charges of treason, unlawful association, disrupting the National Convention, and breaking censorship laws.³³

²⁸ Along with the United Nationalities League for Democracy, representing other ethnic nationality parties.

²⁹ See *What Can The World Do?* ALTSEAN-Burma briefer 2 August 2008.

³⁰ Khun Htun Oo speak in an interview with the BBC on 18 September 2001.

³¹ The UNA is a coalition of 12 ethnic nationality political parties which won a total of 67 seats in the 1990 elections. They are: the Shan Nationalities League for Democracy; the Mon National Democratic Front; the Zomi National Congress; the Arakan League for Democracy; the Chin National League for Democracy; the Kayin National Congress for Democracy; the Kachin State National Congress for Democracy; the Kayah State All Nationalities League for Democracy; the Kayan National Unity Party and Democratic Organization; the Mra People's Party; the Shan State Kokant Democratic Party; and the Arakan People's Democratic Front.

³² See August 2008 letter from the UNA to UN Special Envoy, reproduced in *LawKa PaLa—Legal Journal on Burma*, Burma Lawyers' Council, August 2008.

³³ For a full political prisoner profile of Khun Htun Oo, please see http://www.aappb.org/biography_1.html

Min Ko Naing



While we are the oppressed who have been struggling against injustice in the country, we continue to open our door because we usually find the answer to a problem is based on the principle of national reconciliation.³⁴ Min Ko Naing was sentenced to 65 years and 6 months in November 2008, for his role in the August 2007 demonstrations.³⁵

A key student leader at the time of the 1988 popular uprising, Min Ko Naing was released from prison in November 2004 after spending 16 years in solitary confinement. Min Ko Naing's first official public appearance after his release was at NLD headquarters in March 2005. He and other student leaders were met with cheers and applause from NLD members, who hoped that he and other 88 student leaders qualified and experienced to take the lead in national reconciliation would fill the vacuum left by the ongoing detention of NLD leaders.³⁶

In May 2005, Minister for Home Affairs General Maung Oo asked for a meeting with Min Ko Naing after a bombing in Rangoon. He wanted to know if there was a connection between the 88 Generation Students and the bombing.³⁷ He was reportedly very threatening and said that if they were ever arrested again, they would die in prison. Min Ko Naing responded by saying that they would continue their work through peaceful and non-violent means. He proposed establishing a dialogue for national reconciliation and the release of all political prisoners.³⁸

³⁴ Min Ko Naing media interview with *The Irrawaddy*, 30 April 2007.

³⁵ For more information about the circumstances and the charges against him, see

V. POLITICAL PRISONERS: THEIR ROLE IN DEMOCRATIC TRANSITION.

Also see Min Ko Naing's political prisoner profile at http://www.aappb.org/biography_1.html

³⁶ Interviews with 88 Generation Student members now in exile in Thailand.

³⁷ It is common practice for former political prisoners to be re-arrested and questioned when bombings occur, even when there is no evidence to connect them to incidents of terrorism.

See **VI. AFTER RELEASE FROM PRISON: ONGOING HUMAN RIGHTS ABUSES.**

³⁸ Interviews with 88 Generation Student members now in exile in Thailand.

Together with fellow student leaders and former political prisoners Ko Ko Gyi, Min Zeya, Htay Kywe and Htay Win Aung a.k.a. Pyone Cho³⁹, Min Ko Naing went on to form prominent dissident group the 88 Generation Students in September that year. A charismatic leader and eloquent speaker, Min Ko Naing is widely respected as an important figure who has already made many sacrifices for the sake of his country. Together with the 88 Generation Students group, he can unite people in support of dialogue for national reconciliation.



Zarganar

Since the mid-80s, former political prisoner Zarganar has been a much-loved, prominent figure in society. During the popular uprising of 1988, he came forward to lead celebrities from all areas of the entertainment industry. He publicly spoke out in support of the 88 Generation Students' work in 2006⁴⁰, and in 2007 was briefly arrested for his show of support for the monks during the Saffron Revolution. In 2008 he organised a group of around 400 volunteers to distribute aid in the hardest-hit areas of the Irrawaddy delta, and criticized the regime's response in the

exile media.⁴¹ He was initially sentenced to 59 years in prison, later reduced to 35 years.⁴²

*I want to save my own people... But the government doesn't like our work. It is not interested in helping people. It just wants to tell the world and the rest of the country that everything is under control and that it has already saved its people.*⁴³ Zarganar speaking about his role in independent Cyclone Nargis relief efforts, shortly before his arrest.

³⁹ In 1988, Min Ko Naing and Ko Ko Gyi were Chairperson and Vice-Chairperson of *ba ka tha*, the All Burma Federation of Student Unions, while Min Zeya and Htay Kywe were Chairperson and Vice-Chairperson of *ma ka tha*, the All Burma Students Democratic Movement Organisation. Pyone Cho was Vice-Chairperson of the Yangon University Students Union.

⁴⁰ See *Burma's National Convention Resumes*, the Irrawaddy, 10 October 2006.

⁴¹ See *AAPP Cyclone Nargis Anniversary Report*, May 2009.

⁴² Prior to his current sentence, Zarganar was imprisoned on three separate occasions. He was most recently sentenced under Section 505(b) of the Penal Code, for statements inciting public mischief act (or disturbing public order); Section 295(b) of the Penal Code, for deliberate and malicious insult to religion; Section 32 (B) of the Television and Video Law; Section 36 of the Television and Video Law; Section 17(2) of the Unlawful Association Act; Section 33(a) and 38 of the Electronic Transactions Act. See his political prisoner profile at <http://www.aappb.org/biography.html>

⁴³ Zarganar quoted in *Myanmar Detains Activist Comedian*, New York Times, 6 June 2008.

U Gambira

Monk U Gambira became acutely aware of people's struggle for their livelihood, education and religion whilst attending Dhammasariya⁴⁴ classes in 2005. He started campaigning amongst the monks, and went on to successfully unify the Buddhist clergy nationwide. After the 88 Generation Students led demonstrations in August 2007, U Gambira co-founded the All Burma Monks Alliance (ABMA) with five other monks, to support the popular protests.⁴⁵ The ABMA was instrumental in getting hundreds and thousands of monks onto the streets. As well as a reduction in commodity prices, they called for the release of political prisoners and a process of national reconciliation. U Gambira was initially sentenced to 68 years, later reduced to 63 years for his leading role in the Saffron Revolution.⁴⁶



Since August [2007], I have seen my country galvanized as never before. I have watched our 88 Generation leaders bravely confront the military. I have watched a new generation of activists join to issue an unequivocal call for freedom. And I have watched as many in the police and military, sickened at what they were forced to do to their countrymen, give so many of us quiet help.⁴⁷

The official recognition of all Burma's political prisoners and their unconditional release is the most important step to pave the way for inclusive, tripartite dialogue for national reconciliation.

⁴⁴ Training to become a teacher of Buddhist scriptures.

⁴⁵ See U Gambira's political prisoner profile at http://www.aappb.org/biography_1.html

⁴⁶ U Gambira was charged under Section 33 (a) and 38 of the Electronic Transactions Law; Section 6 of the forming of organizations law; Section 13/1 of Immigration Act; Section 505/b of the penal code - Statements conducive to public mischief; Section 295/a of the Penal Code, insulting religion; Section 147 of the Penal Code, punishment for rioting; Section 145 of the Penal Code, unlawful assembly; Section 17/1 of the Unlawful Association Act; Section 17/20 of Printers and Publishers Act; and Section 5/j of the Emergency Provisions Act. **See Figure 2.**

⁴⁷ U Gambira in an op-ed published in the Washington Post on 4 November 2007, the day he was arrested by authorities.

IV. THE ‘ROADMAP TO DEMOCRACY’: A BARRIER TO NATIONAL RECONCILIATION

The junta’s ‘Roadmap to Democracy’¹ is designed to legitimize military rule behind a smokescreen of ‘democratic reform’. It does not include the release of political prisoners or a dialogue for national reconciliation, crucial steps in a transition to democracy. Steps in the junta’s Roadmap, such as the reconvening of the National Convention and the constitutional referendum, have been accompanied by the arrests of political activists.

The National Convention and constitution-drafting process have also marginalized democratically-elected representatives, ethnic nationality groups, pro-democracy activists and ordinary citizens, despite efforts to participate in good faith and to shape a constitution founded on principles of democracy, human rights, equality and self-determination.

The resulting 2008 Constitution is a barrier to national reconciliation and democratic transition because it entrenches military rule, marginalizes ethnic nationalities, and undermines human rights. It also excludes current political prisoners from participation in elections on grounds of their imprisonment.

The planned 2010 elections will be based on the 2008 Constitution. Without tripartite dialogue for national reconciliation - with the official recognition and unconditional release of all political prisoners as a crucial first step - elections will not be a solution for Burma. As part of tripartite dialogue, a comprehensive review of the 2008 Constitution to address issues of the exclusion of political leaders from positions of power, self-determination, human rights, impunity, and the independence of the judiciary is vitally important. In addition, elections can not be considered ‘free’ or ‘fair’ if they are held without erasing all criminal records of political prisoners to guarantee their right to participation, after release from prison. In practice this means their right to stand as political candidates, vote in independently-monitored free

¹ Seven-step roadmap: (1) Reconvening of the National Convention that has been adjourned since 1996. (2) After the successful holding of the National Convention, step by step implementation of the process necessary for the emergence of a genuine and disciplined democratic system. (3) Drafting of a constitution in accordance with the basic principles and detailed principles laid down by the National Convention. (4) Adoption of the constitution through national referendum. (5) Holding of free and fair elections for Pyithu Hluttaws (legislative bodies) according to the new constitution. (6) Convening of Hluttaws attended by Hluttaw members in accordance with the new constitution. (7) Building a modern, developed and democratic nation by the state leaders elected by the Hluttaw; and the government and other central organs formed by the Hluttaw.

and fair elections, join political parties, and form political parties or civil society groups if they choose to do so.

The National Convention and the flawed constitution drafting process

After the 1990 elections, the military refused to transfer power to the democratically-elected government, instead declaring that the newly elected representatives were to draw up a new constitution, not sit as a parliament.²

The regime unilaterally laid down the ‘6 Objectives of the National Convention’, the crucial one being a central role for the army in the future leadership of the State, before the National Convention had even got under way.³ When the National Convention did get under way in 1993, it was tightly controlled by various State Law and Order Restoration Council (SLORC)⁴ committees⁵, rules and procedures. Just 99 of the 703 delegates were elected representatives from the 1990 elections; the others were handpicked by the junta.⁶ The rules included strict censorship of printed material and speeches, and effectively banned any free discussion of the process.⁷ NLD delegate Dr. Aung Khin Sint and his colleague U Than Min were arrested and sentenced to 20 years’ and 15 years’ imprisonment respectively for distributing speeches delivered to the convention.⁸

Although the NLD proposed a set of basic constitutional principles at the National Convention in 1993, and agreed upon federal principles with ethnic nationality parties including the Shan Nationalities League for Democracy and the United Nationalities League for Democracy,

² State Law and Order Restoration Council (SLORC) Declaration 1/90, 27 July 1990.

³ SLORC Order 13/92: Formation of the Convening Commission for the National Convention. The six objectives are: 1. Non-disintegration of the Union; 2. Non-isintegration of national solidarity; 3. Perpetuation of Sovereignty; 4. Flourishing of a genuine multiparty democracy system; 5. Development of eternal principles of justice, liberty and equality in the State; and 6. for the *Tatmadaw* (army) to be able to participate in the national political leadership role of the State.

⁴ The State Law and Order Restoration Council (SLORC) changed its name to the State Peace and Development Council in 1997, prior to accession to the Association of South East Asian Nations (ASEAN).

⁵ For details of the committees, see *National Convention: Roadmap to Instability*, ALTSEAN-Burma, July 2007.

⁶ *LawKa PaLa – Legal Journal on Burma*, Burma Lawyers Council, August 2008.

⁷ See *Vote to Nowhere – the May 2008 Constitutional Referendum in Burma*, Human Rights Watch May 2008.

⁸ See *Report on the situation of human rights in Myanmar*, by UN Special Rapporteur Yozo Yokota for the Commission on Human Rights, 16 February 1994. Ref: E/CN.4/1994/57.

there was no political space for these to be adopted.⁹ With no room for dissent, delegates were powerless to exert any significant influence over the process and only served to rubber-stamp the ‘104 basic principles’ proposed by the SLORC committees, which would later form the problematic basis of the 2008 Constitution.¹⁰

In 1995, the 86 NLD delegates boycotted the National Convention in protest at the undemocratic process, and in 1996 it was adjourned. That same year, the junta criminalized criticism of the National Convention process with Law No. 5/96, punishable by up to 20 years in prison.¹¹ At present, 37 political prisoners currently imprisoned have been charged under this law.¹²

In 2003, in the wake of the Depayin massacre, the junta announced the reconvening of the Convention as Step One of its so-called Seven-Step Roadmap to Democracy. Despite significant calls for the process to be reformed so that it was guided by democratic and human rights principles, it continued in the same vein as before.¹³ In 2004 the Shan Nationalities League for Democracy party led by MP-elect U Khun Htun Oo also decided to boycott the convention process. “This convention is bound by conditions which mean that it can not solve the country’s problems,” said U Khun Htun Oo at the time.¹⁴ Soon afterwards, senior Shan political representatives including U Khun Htun Oo were arrested after taking part in a political meeting on Shan National Day.

Many ethnic nationality opposition groups either boycotted the process or criticized it.¹⁵ Ethnic ceasefire groups which participated made numerous proposals to change the agenda of the Convention and

⁹ See *Proposal for National Reconciliation: Towards Democracy and Development in Burma*, Movement for Democracy and Ethnic Nationalities, August 2009.

¹⁰ For example, these included: a guarantee of a leading role for the armed forces in the future affairs of State; a requirement that the military appoint 25% of the seats in the upper and lower houses of the national parliament; and a requirement that at least one of the 3 people holding offices of president and vice presidents be from the military. See *Special Report: On The Road to Democracy?*, ALTSEAN-Burma, March 2004. See also *Vote to Nowhere—the May 2008 Constitutional Referendum in Burma*, Human Rights Watch May 2008.

¹¹ Law 5/96 *On The Law Protecting the Peaceful and Systematic Transfer of State responsibility and the Successful Performance of the Functions of the National Convention Against Disturbances and Opposition*.

¹² They have all been charged with additional offences under other laws. It is common practice for charges against political prisoners to be changed and new ones added after their arrest. They are not always sentenced under all the charges brought against them, and it is not known if the remaining charges are dropped.

¹³ See *National Convention: Roadmap to Instability*, ALTSEAN-Burma, July 2007.

¹⁴ See *Ethnic Parties Boycott National Convention*, the Irrawaddy, 14 May 2004.

¹⁵ For an overview of the position of different groups, see *National Convention: Roadmap to Instability*, ALTSEAN-Burma, July 2007.

instigate discussion on a decentralized federal union of Burma, but they were all either rejected or ignored.¹⁶

In September 2007 the junta announced the conclusion of the National Convention, even as protests against military rule spread across the country. In October, the SPDC handpicked a 54-member Commission for Drafting the State Constitution, which did not include the NLD.¹⁷

The sham constitutional referendum

On 19 February 2008, the junta announced that a constitutional referendum would be held in May that year, followed by parliamentary elections in 2010. A week later it passed Referendum Law 1/2008, criminalizing ‘distributing papers, using posters or disturbing voting’, punishable by a jail term of up to three years. Although AAPP has no record of any detainees charged under this law, it was undoubtedly used as a deterrent to stop people from campaigning for a ‘no’ vote or a boycott of the referendum.

The draft constitution was only made available to the public on 4 April, at a cost of 1,000 kyat, just less than the average daily wage of a Burmese worker. It was only published in Burmese and English, not any of the other ethnic nationality languages spoken in Burma.

In the terrible aftermath of Cyclone Nargis, the referendum took place on 10 and 24 May, amidst widespread reports of vote-rigging, intimidation, and human rights violations.¹⁸ The junta claimed that 92% of voters approved the constitution.

In the run-up to the referendum, NLD members and other pro-democracy activists took part in a ‘Vote No’ campaign, despite intimidation and harassment.¹⁹ AAPP records show that at least 79 activists were arrested for their peaceful efforts to encourage ordinary people to vote against the constitution.²⁰

¹⁶ See *National Convention: Roadmap to Instability*, ALTSEAN-Burma, July 2007 and *Vote to Nowhere – the May 2008 Constitutional Referendum in Burma*, Human Rights Watch May 2008 for an overview of those proposals.

¹⁷ See *Vote to Nowhere – the May 2008 Constitutional Referendum in Burma*, Human Rights Watch May 2008.

¹⁸ See *Vote to Nowhere – the May 2008 Constitutional Referendum in Burma*, Human Rights Watch May 2008; *Myanmar Briefing—Human Rights Concerns a Month After Cyclone Nargis*, Amnesty International 5 June 2008; *Ballots Against Peoples’ Will – the activities done by the military government in the region of Palaung against the people’s will to gain approved ballots*, Palaung Working Group Against SPDC’s referendum, 2008.

¹⁹ See *Vote to Nowhere – the May 2008 Constitutional Referendum in Burma*, Human Rights Watch May 2008.

²⁰ 9 have since been released, 15 have been sentenced, and 55 are still in detention.



Khun Dee De

Three young Karenni activists helped organise ‘Vote No’ campaign activities in late April, including spraying the symbols for ‘No’, ‘X’ and ‘Vote No’ on government signposts and walls, and distributing ‘Vote No’ pamphlets.

Balloons were also released, with pieces of paper reading, ‘To be free from dictatorship, let’s vote no’ attached. Khun Bedu a.k.a. Lwee Zee Nyein and Khun Kawrio a.k.a. Mariyo were sentenced to a total 37 years, while Khun Dee De was given a 35-year sentence.²¹



Khun Kawrio



Khun Be Du

They were charged under immigration and tax laws, as well as draconian laws used to curb freedom of expression and association. For more information about the laws often used to criminalize political dissent, see V. POLITICAL PRISONERS: THEIR ROLE IN DEMOCRATIC TRANSITION.

²¹ Khun Bedu a.k.a. Lwee Zee Nyein Khun Kawrio a.k.a. Mariyo were sentenced under the Electronic Transactions Act, the Unlawful Association Act, the Emergency Provisions Act, the Penal Code and a tax law. Khun Dee De was not charged under the Penal Code. For more information, see political prisoner profiles created by AAPP at http://www.aappb.org/biography_2.html

1988	Hundreds of thousands of people took to the streets in nationwide protests calling for democratic and economic reforms. The army seized control, brutally crushing protests and killing an estimated 3,000 people. Military generals formed the State Law and Order Restoration Council (SLORC) and martial law was declared.
1989	SLORC changed the country's name to 'Myanmar', and passed electoral law (No. 14/89) permitting political parties to form. After leader of the National League for Democracy party (NLD) Daw Aung San Suu Kyi's speeches drew huge crowds, she was sentenced to house arrest.
1990	The NLD won over 80% of the seats and 60% of the popular vote in elections. SLORC refused to transfer power to the democratically-elected government. Instead declaration 1/90 stated that the new members of parliament were to draw up a new constitution, not sit as an elected parliament.
1992	SLORC announced the formation of the National Convention Convening Commission. Delegates were only permitted to draw up 'basic principles' of the new constitution, which had to be in line with the key objectives of the National Convention already decided by SLORC – the crucial one being a central role for the army in the future leadership of the State.
1993	The National Convention convened with 703 delegates. Only 99 were elected representatives from the 1990 elections, the others were handpicked by SLORC.
1995	NLD delegates walked out of the National Convention in protest at the undemocratic process. The Convening Commission subsequently expelled them.
1996	SLORC adjourned the National Convention and passed law No. 5/96, prohibiting any criticism of the National Convention process, punishable by a prison term of up to 20 years.
1998	The NLD renewed its call for the convening of Parliament, which the junta ignored. In response, a coalition of parties set up the Committee Representing the People's Parliament. The authorities detained scores of elected representatives.
2002	Daw Aung San Suu Kyi was released from house arrest and embarked on a nation-wide tour. Her speeches once again drew huge crowds, reaffirming her popularity.
2003	At Depayin around 70 NLD members and supporters were reportedly killed in an ambush on Daw Suu's convoy by members of the junta-backed Union of Solidarity and Development Association. Daw Suu was returned to house arrest. In response to the international outcry, Prime Minister Khin Nyunt announced a 'Seven Step Roadmap to Democracy'.
2004	The National Convention resumed as the first step in the 'Roadmap'. The Shan Nationalities League for Democracy decided to boycott the process, and Shan leaders were arrested soon afterwards.

²² Compiled from Human Rights Watch and Burma Lawyers' Council sources.

2007	Peaceful protests spread across the country with hundreds and thousands of monks and ordinary citizens taking part. Amidst the protests, the National Convention process ‘concluded’. Two weeks later, a brutal crackdown against protestors took place. Soon afterwards, the State Peace and Development Council (SPDC, successor to SLORC) chose a 54-member Commission for Drafting the State Constitution. The NLD was excluded from the constitution-drafting process.
2008	The SPDC announced that it would hold a referendum on the draft constitution in May, followed by parliamentary elections in 2010. On 2 & 3 May Cyclone Nargis struck Burma, killing an estimated 140,000 people. On 10 & 24 May, the SPDC pushed ahead with its planned constitutional referendum amidst widespread reports of vote-rigging, intimidation and human rights violations. The regime claimed that 92% of voters approved the constitution.

Figure 1 *Timeline – the flawed constitution drafting process to the sham constitutional referendum*²²

The 2008 Constitution and 2010 elections

Burmese political, legal and pro-democracy groups and international human rights organizations have widely criticized the 2008 Constitution, which will form the basis of the 2010 elections.²³ Amnesty International described it as ‘an effort to undermine respect for human rights and to entrench military rule and impunity.’²⁴

Under the new constitution, power largely rests with the military, and the principle of an independent judiciary is compromised. Twenty-five percent of seats in both houses of the national parliament and one-third of the state and regional assemblies are allocated to the military, as nominated by the *Tatmadaw* (Burmese army) Commander-in-Chief.²⁵ The President is not elected by the people, but by the parliament, and a *Tatmadaw* member must be one of three candidates for President.²⁶ The President may declare a state of emergency, at which

²³ See *Burma’s Dead-End Road to Democracy: Overcoming Roadblocks and Finding Solutions*, Burma Partnership, 2009; *LawKa PaLa – Legal Journal on Burma*, Burma Lawyers’ Council, August 2008; *Vote to Nowhere: The May 2008 Constitutional Referendum in Burma*, Human Rights Watch, May 2008.

²⁴ Amnesty International Briefing Paper *Myanmar: Constitutional Referendum Flouts Human Rights*, May 2008.

²⁵ *Constitution of the Republic of the Union of Myanmar (2008)*, published September 2008, Chapter 4 articles 109(b) and 161(d).

²⁶ Chapter 3, Article 60(b).

²⁷ Chapter 11, Articles 414(b) and 420.

²⁸ Chapter 11, Article 413(b).

time ‘fundamental rights’ may be suspended²⁷ and the Commander-in-Chief may assume ‘executive and judicial powers.’²⁸

Fundamental changes to the Constitution such as amendments to basic principles like 20(f), ‘the Defence Services is mainly responsible for safeguarding the Constitution’²⁹, are very difficult to enact. They require ‘prior approval of more than seventy-five percent of all the representatives of the *Pyidaungsu Hluttaw* (the Union Assembly, national parliament), after which in a nationwide referendum only with the votes of more than half of those eligible to vote’.³⁰

Barriers to national reconciliation and democratic transition in the 2008 Constitution

Provisions in the Constitution represent significant barriers to national reconciliation and democratic transition.

a. The exclusion of political prisoners from political participation

Daw Aung San Suu Kyi is effectively prevented from being appointed President or Vice-President under the 2008 Constitution. She is the widow of a British citizen and her two sons hold British citizenship, although she herself is a Burmese citizen. Article 59(f) of the Constitution states:

“Shall he [sic] himself, one of the parents, the spouse, one of the legitimate children or their spouses not owe allegiance to a foreign power, not be subject of a foreign power or citizen of a foreign country. They shall not be persons entitled to enjoy the rights and privileges of a subject of a foreign government or citizen of a foreign country.”³¹

Current political prisoners are prevented from being elected to the People’s Assembly. Article 121 (a) of the 2008 Constitution:

‘The following persons shall not be entitled to be elected as the Pyithu Hluttaw [People’s Assembly, state level] representatives: (a) A person serving prison term, having been convicted by the Court concerned for having committed an offence.’³²

²⁹ Chapter 1, Article 20(f).

³⁰ Chapter 12, Article 436(a).

³¹ Chapter 3, Article 59(f).

³² Chapter 4, Article 121(a).

³² Chapter 4, Article 121(a).

This effectively bars all of Burma's more than 2,100 political prisoners from the ability to hold seats in the State parliament. A separate clause also provides for further disqualifications under Election Law.³³ In addition, Article 392 prohibits 'persons serving prison terms' from having the right to vote, as well as those 'disqualified by election law'.³⁴ Current election laws prohibit political prisoners from participating in the 2010 elections³⁵. The current laws effectively leave the NLD the dilemma of either dismissing Daw Aung San Suu Kyi and the other 430 members currently imprisoned, or face dissolution of the party.

b. The marginalization of ethnic nationalities

The rigid centralized structure set out in the 2008 Constitution and the dominance of the *Tatmadaw* ensures there is no right to self-determination.³⁶ The Constitution also grants little power to regional or self-administered bodies over the issues of language, culture and religion, crucial to diverse groups.³⁷ It does not reflect the spirit of the Panglong Agreement. The new Constitution and the forthcoming elections have already contributed to escalating tensions between the regime's army and armed ethnic nationality groups.³⁸

c. The undermining of human rights

The *Citizenship, Fundamental Rights and Duties of Citizens* chapter of the Constitution fails to protect fundamental human rights. Of concern is Article 353 which states, 'Nothing shall, except in accord with

³³ Chapter 4, Article 121(l).

³⁴ Chapter 9, Article 392(b) and (e).

³⁵ Political Parties Registration Law (2/2010) states:

Chap II, Article 4(e) A prisoner may not organize a political party

Chap I, Article 2 (a) A prisoner is defined as a person who has been convicted and sentenced by a court and is currently serving a jail term, or a person involved in an appeal of conviction.

Chapter II, Article 10 (e) A prisoner may not be a member of a political party.

³⁶ See *Burma's Dead-End Road to Democracy: Overcoming Roadblocks and Finding Solutions*, Burma Partnership, 2009; and *LawKa PaLa – Legal Journal on Burma*, Burma Lawyers' Council, August 2008.

³⁷ See *The 2008 Myanmar Constitution: Analysis and Assessment*, Yash Ghai, Professor Emeritus, University of Hong Kong.

³⁸ In April 2009 the regime issued instructions to the various ethnic ceasefire groups to incorporate their armed forces into a new Border Guard Force prior to the 2010 elections. Many of the groups rejected this demand, and consequently the regime increased its military presence in Kachin, Shan and Karen States to exert further pressure on ceasefire groups to comply. In August, the regime's army showed it meant business by breaking its 20-year ceasefire agreement with the National Democracy Alliance Army (MNDAA) in the Kokang area of Northern Shan State. The offensive forced approximately 37,000 refugees to flee across the border into China. See *2010 Elections: A Recipe for Continued Conflict*, ALTSEAN-Burma, October 2009.

existing laws, be detrimental to the life and personal freedom of any person.’³⁹ [Emphasis added]. Burma has many draconian laws, commonly used to criminalize political dissent and imprison pro-democracy activists. See Figure 2. Article 354 relating to the rights to freedom of expression, association and assembly also restricts these on vague grounds of ‘Union security, prevalence of law and order, community peace and tranquility or public order and morality’.⁴⁰ Furthermore it does not include provisions for the protection of fundamental rights, such as the prohibition of torture, and the right to a fair trial.

The 2008 Constitution does little to meet Burma’s obligations under the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), which Burma has ratified. Under the new Constitution, a provision which would at first appear to outlaw discrimination, including on the basis of gender, ends, “However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only”⁴¹, thereby entrenching the exclusion of women. Gender equality and the full participation of women in the national reconciliation process are vital for a future democratic Burma.

d. The lack of independent judiciary

There can be no progress on democratic transition until Burma has a truly independent judiciary, and the Constitution does not provide for that. There is no independent commission to appoint judges, or oversee human rights.⁴² Instead the President – most likely from the military – has control over the appointment of the Chief Justice.⁴³ The Supreme Court has no powers over military courts, and final decisions lie with the Commander-In-Chief on matters of military justice.⁴⁴

e. Impunity

Impunity for past human rights violations carried out by the military government is effectively enshrined in the Constitution. Article 445 states, ‘No proceeding shall be instituted against the said Councils [State Law and Order Restoration Council and the State Peace and

³⁹ Chapter 8, Article 353.

⁴⁰ Chapter 8, Article 354.

⁴¹ Chapter 8, Article 352.

⁴² *The 2008 Myanmar Constitution: Analysis and Assessment*, Yash Ghai, Professor Emeritus, University of Hong Kong.

⁴³ Chapter 6, Article 299(c(i)).

⁴⁴ See *Myanmar: Constitutional referendum flouts human rights*, Amnesty International, 9 May 2008.

Development Council] or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties.⁴⁵ An independent national human rights commission would be an important tool for tackling serious human rights violations and a prevailing culture of impunity, but the Constitution does not have any provision for such an institutional human rights mechanism.

The junta's 'Roadmap to Democracy' is a barrier to national reconciliation. Its implementation has been accompanied by the imprisonment of political activists, and will only lead to their further exclusion from any political process under the terms of the 2008 Constitution.

⁴⁵ Chapter 14, Article 445.

V. POLITICAL PRISONERS: THEIR ROLE IN DEMOCRATIC TRANSITION

Burma's political prisoners have all made significant sacrifices for the sake of their beliefs – not least their personal freedom, and separation from their families. Without their unconditional release, there can be no progress towards national reconciliation and democratic transition in the country.

AAPP recognizes the contribution of each and every political prisoner to the struggle for democracy, human rights, equality and self-determination in Burma. However, a detailed examination of their individual contributions is beyond the scope of this report. Key groups of political prisoners highlighted here can - given the opportunity - play an important role in democratic transition in Burma. They have extensive knowledge and experience they could put to good use. But, they cannot take on the task alone.

All political prisoners should be given the opportunity to participate in democratic transition. After their release from prison, political prisoners must have their criminal records erased, in order for them to claim their rights to stand as political candidates, vote in independently-monitored free and fair elections, join political parties, and form political parties or civil society groups if they choose to do so, without restrictions.

What is a political prisoner?

AAPP defines a political prisoner as someone who is arrested because of his or her active involvement in political movements, either through peaceful or resistance means.

Under military rule, the law in Burma has been used to suppress human rights rather than protect them. There are a number of draconian laws commonly used to criminalize the rights to freedom of expression, assembly and association. These laws contravene the following international law, to which Burma is a party: Articles 19 and 20 of the Universal Declaration of Human Rights; Articles 13 and 14 of the Convention for the Rights of the Child; and the International Labour Organisation Freedom of Association and Protection of the Right to Organise Convention (C87).¹ Human rights standards on freedom of

¹ Universal Declaration of Human Rights Article 19 "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." And Article 20 (1), "Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association." Convention on the Rights of the Child Article 13, "1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. 2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order, or of

expression and association require that interference with this right must be necessary and proportionate to a threat posed.² Vaguely-worded security laws with sweeping provisions are also commonly used to arbitrarily arrest and detain political activists deemed to be a ‘threat to the security of the state’. See Figure 2 for an overview of the laws. In addition, political activists are sometimes charged with criminal acts such as drug possession, in an attempt to defame them.

Political activists are usually arrested by Military Intelligence (MI)³ personnel in plain clothes. They are hooded and taken away to a secret detention centre, where they are interrogated and often tortured for days or even weeks on end. They have no contact with the outside world at this time. After interrogation, they are usually transferred to a prison or police station, but may be held there for several weeks or even months before they are charged. Before their trial starts, they sometimes have access to a lawyer, but not always. If they are able to meet with a lawyer, it is usually only briefly, and an MI or Special Branch (SB) police officer is present. Summary trials take place in closed courts inside prison compounds or military-style tribunals. They are often brief and perfunctory, with little or no opportunity to present a defence. Only after sentencing are political prisoners allowed family visits. After their release, many political prisoners have testified that judges took direction from MI during the case.^{4 5} In some cases, trials lasted no more than a few minutes, with the judge reading out the charges and the sentence from a scrap of paper.⁶ Sentences are applied cumulatively not concurrently, meaning that jail terms of 30 years or more are not uncommon. Finally, the right to appeal is often denied in practice.^{7,8}

public health or morals. Article 14, ¶1. States Parties shall respect the right of the child to freedom of thought, conscience and religion. 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.¶

² See the Siracusa Principles on the Limitations and Derogation Provisions in the International Covenant on Civil and Political Rights, and the Paris Minimum Standards of Human Rights Violations in a State of Emergency.

³ Now officially known as Military Affairs Security (MAS), currently headed by Lieutenant General Ye Myint but commonly referred to as Military Intelligence (MI). It was changed to MAS in 2004, when it was headed by Major General Myint Swe.

⁴ Interviews with former political prisoners on file with AAPP, 2000/6 to date.

⁵ See also *Misrule of Law: Burma's Government Leaps Over Legal Process*, Daw Aung San Suu Kyi, published in *Spirit for Survival*, AAPP 2001.

⁶ *Ibid.*

⁷ For a more comprehensive review of the administration of justice in Burma from a human rights perspective, see *Myanmar: Justice on Trial*, Amnesty International, July 2003.

⁸ These practices contravene international standards adopted by the UN such as a) The Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment b) the Standard Minimum Rules for the Treatment of Prisoners c) the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment d) the Basic Principles on the Role of Lawyers and e) the Basic Principles on the Independence of the Judiciary.

Figure 2 - *Laws used to arbitrarily detain activists or criminalize political dissent*⁹

Law	Section	Offences	Maximum Term
Penal Code	121, 122(1) 122(2)	Definition of high treason; punishment of high treason.	Death or life imprisonment
	124, 124(A) and 124(B)	Misprision of high treason; sedition; advocating overthrow of an organ of the Union or of its constituent units by force.	Seven years; life imprisonment; three years
	143-146	Unlawful assembly.	Two years
	295, 295(A)	Insulting religion.	Two years
	505(B)	Making a statement or rumour conducive to public mischief.	Two years
Unlawful Association Act (1908)	17/1 & 17/2	Membership of an unlawful association; management or promotion (or assisting) of an unlawful association.	Three years; Five years
State Protection Law (1975) ¹⁰	10(a) & 10(b)	Detention of a citizen who is endangering State sovereignty and security without charge or trial; house arrest.	Five years, renewable by an additional year ¹¹
Emergency Provisions Act (1950)	5(d), 5(e), 5(j)	Causing public alarm; spreading false news; undermining the security of the Union or the restoration of law and order.	Seven years
Electronic Transactions Law (2004)	33(a), 33(b) & 38	Using electronic transactions technology to commit any act detrimental to the security of the State; sending or receiving information relating to secrets of the security of the State; attempting, conspiring or abetting.	Fifteen years

⁹ This is an overview of the main laws used to detain political activists. A comprehensive review of every law used to detain activists is beyond the scope of this report. See also: *The Future In The Dark: The Massive Increase in Burma's Political Prisoners, September 2008*, AAPP & USCB.

¹⁰ Also known as the Law to Safeguard the State from the Dangers or Destructive Elements.

¹¹ On the order of the Executive, with no right of judicial appeal.

6/88	5, 6, 7	Prohibition of: forming organizations that are not permitted to register under the Political Parties Registration Law 1988; organizations that attempt to incite unrest; membership thereof or aiding and abetting.	Five years
6/96	3, 4, 5, 6	'The law protecting the peaceful and systematic transfer of state responsibility and the successful performance of the functions of the National Convention against disturbances and oppositions'.	Twenty years
Printers & Publishers Act (1962)	17/20	All printed material must be submitted to the Press Scrutiny Board for vetting prior to publication.	Seven years
Official Secrets Act (1923)	3	Any person who communicates information calculated to be, directly or indirectly, useful to an enemy.	Fourteen years
Television And Video Law (1996)	32(B)	Copying, distributing, hiring or exhibiting etc a video that has not passed censorship.	Three years

Their role in shaping politics

Key groups of political prisoners have already made a significant contribution to the political landscape in Burma and will continue to do so, once they are unconditionally released and their criminal records are erased, so that there is no barrier to claiming their rights to stand

as political candidates, vote in independently-monitored free and fair elections, and join political parties.

The National League for Democracy

There are at least 430 members of the National League for Democracy – including 12 elected MPs¹² - behind bars in Burma today, the largest single group of political prisoners. For more than two decades NLD members have been arbitrarily detained, harassed, imprisoned and even killed¹³ in order to prevent them assuming the power granted to them by the people of Burma in the 1990 elections.



Daw Aung San Suu Kyi

In full awareness of the essential role of political parties in democratic societies... I will be guided by the policies and wishes of the National League for Democracy. However, in this time of vital need for democratic solidarity and national unity, it is

my duty to give constant and serious considerations to the interests and opinions of as broad a range of political organizations and forces as possible, in particular those of our ethnic nationality races.¹⁴

In its Shwegondaing Declaration of 29 April 2009, the NLD stated that it would participate in the 2010 elections only after careful study of the forthcoming Party Registration Act and Election Law, and only then if

1. All political prisoners including the leaders of the NLD are unconditionally released.

2. The provisions of the 2008 Constitution which are not in accord with democratic principles are amended and

3. An all-inclusive free and fair general election is held under international supervision.¹⁵

However, the 2010 election laws present the NLD with a difficult dilemma as under the law, ¹⁶ it must expel its members who are currently imprisoned, including Daw Aung San Suu Kyi or face dissolution as a political party.

¹² AAPP figures as of 28 February 2010.

¹³ Approximately 70 members of the NLD were reportedly killed in the Depayin massacre of 30 May 2003.

¹⁴ Statement by Daw Aung San Suu Kyi, 8 November 2007.

¹⁵ See *The Shwegondaing Declaration*, National League for Democracy, 29 April 2009.

¹⁶ Political parties registration law 2/2010

The 88 Generation Students

At least 41 known members of the group are currently in prison, over half of them former political prisoners who have already spent many years in jail for their pro-democracy activities as student activists.¹⁷

After the group was founded, the 88 Generation Students reached out to wider civil society in Burma via solidarity campaigns. During the ‘White Sunday’ campaign, members of the group would wear white and visit the family members of those still imprisoned, to encourage and support them. After leaders of the group were arrested and detained in connection with the campaign, other members of the 88 Generation Students launched petition signature and ‘white expression’ campaigns, designed to show public solidarity with the imprisoned leaders, and to press the military regime to free all political prisoners and initiate a genuine national reconciliation process. The group was keen to cross ethnic and religious divides, and in October 2006 launched a week-long multi-faith event. Prayers were offered for the release of all political prisoners in Buddhist monasteries, Christian churches and Muslim mosques throughout the country.¹⁸

In January 2007, Min Ko Naing and other leading members of the 88 Generation Students traveled across Burma to organize support, and to promote human rights as a cornerstone for national reconciliation. They visited townships in Bago, Mandalay and Sagaing Divisions, as well as Chin State in western Burma.

The Electronic Transactions Law

Section 33: “*Whoever commits any of the following acts by using electronic transactions technology shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and may also be liable to a fine:*

(a) doing any act detrimental to the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture.”

The Open Heart Letter Campaign in early 2007 encouraged ordinary citizens to express their grievances to the authorities in letters, collected by activists involved in the campaign. In explaining the purpose of it to

¹⁷ AAPP figures as of 28 February 2010.

¹⁸ See *Activists Organize Prayer Campaign*, the Irrawaddy, 25 October 2006.

fellow citizens, the group said, “You have the right to demand your rights. Not until the world hears your cries, will you be free from your sufferings. It is the right time to assert the truth.”¹⁹

On 15 August 2007, the junta increased fuel prices by up to 500%. A few days later, members of the 88 Generation Students chose to walk home from the memorial service for a fellow activist rather than pay the bus fares, in protest at the price hike. They were joined by ordinary citizens and the protest grew.

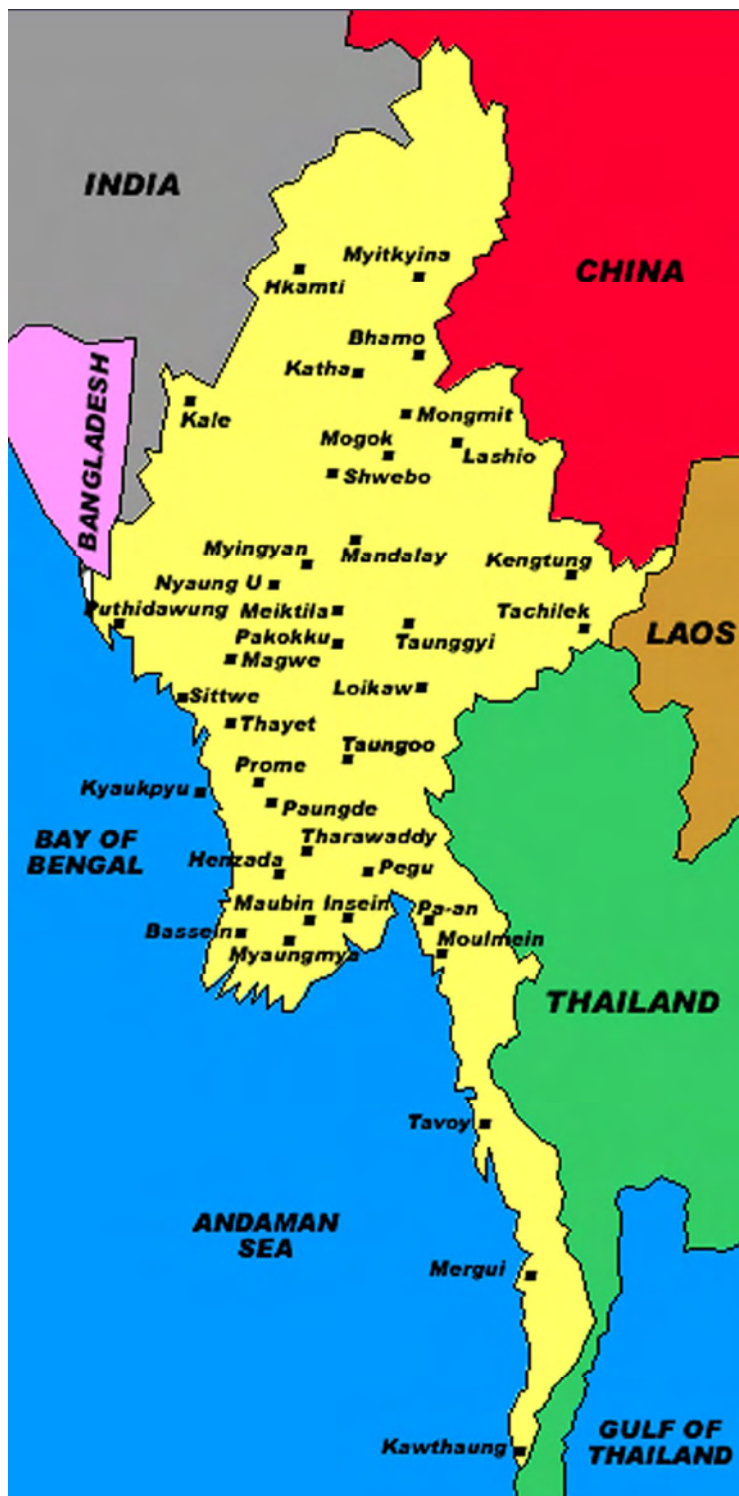
Although members of the 88 Generation Students were quickly arrested, their action sparked the Saffron Revolution.²² members of the 88 Generation Students are now serving at least 65 years in prison, and one woman is serving 70 years.²⁰ They were sentenced to a total of 60 years each, under four separate counts of Section 33(a) of the Electronic Transactions Law, and an additional five years under Section 6 of the law prohibiting the formation of organizations without prior consent. They still face numerous outstanding charges, although it is unclear whether they will face trial again.²¹ Leading members of the group have been transferred to remote prisons in the far north, south, east and west of the country.

¹⁹ *The Findings in the Open Heart Letter Campaign in January 2007*, 88 Generation Students, March 2008.

²⁰ Female member of the group Mar Mar Oo is serving 70 years. Other female members Nilar Thein a.k.a. Ni Ni Mar, Sandar Min a.k.a. Shwee, Thet Thet Aung, and Thin Thin Aye a.k.a. Mee Mee were all sentenced to 65 years. Ant Bwe Kyaw, Kyaw Kyaw Htwe a.k.a. Marky, Kyaw Min Yu a.k.a. Jimmy, Min Zeya, Pannate Tun, Than Tin a.k.a. Kyi Than, Thet Zaw, Zaw Zaw Min and Zaya a.k.a. Kalama were also sentenced to 65 years. 9 members of the group were also sentenced to an additional six months on contempt of court charges. They are: Min Ko Naing a.k.a. Paw Oo Tun, Ko Ko Gyi, Htay Kywe, Hla Myo Naung, Aung Naing a.k.a. Myo Aung Naing, Aung Thu, Mya Aye a.k.a. Thu Ya, Nyan Lin and Pyone Cho a.k.a. Htay Win Aung.

²¹ The full charges are: Section 130/b of the Penal Code (committing depredation of foreign governments at peace with Burma) for open criticism of China and Russia for their use of veto power to reject the Burma resolution at the UN Security Council; Section 4 of Endangering National Conventionø (SPDC Law No. 5/96) for criticism of the national convention and constitution writing process; Section 17/20 of the Printers and Publishers Registration Act for failure to obtain permission to print publicity pamphlets and for possession of printers without registration; Section 33(a) of the Electronic Transactions Law; Section 17 (1) of the Unlawful Association Act; Section 24/1 of the Law Amending the Control of Money (for illegal possession of foreign currency); 32(b)/ 36 of the Television and Video Law; Section 6 of the Organization of Association Law for forming an organization without permission; Section 505(b) of the Penal Code for denouncing the government; and Section 17 (20) of the Unlawful Association Act.

Figure 3



Source: Assistance Association for Political Prisoners (Burma)

*A constitution should embody the dignity and political standards of a country and its citizens. Full political participation in the drafting process should be ensured from the second that the constitution's foundation is laid. Flexibility and malleability are the keys.*²² Group leader Ko Ko Gyi is being held in the remote Monghsat prison. He was sentenced to 65 years and 6 months in prison in November 2008.



*We initiated these peaceful marches [in August 2007] not only to protest against the hike in fuel prices, but to bring attention to the immense suffering of the people of Burma. Our goal has always been, and will remain, peaceful transition to a democratic society and national reconciliation.*²³ Group leader Htay Kywe was also sentenced to 65 years and 6 months in November 2008.

In a joint statement with the All Burma Monks' Alliance (ABMA) and the All Burma Federation of Student Unions (ABFSU) issued on Human Rights Day 2009, the 88 Generation Students said, "We urge the international community to not recognize the 2010 election, if there is no release of all political prisoners, including Daw Aung San Suu Kyi, no sustainable political dialogue with democratic opposition and ethnic minorities, and no national reconciliation first."²⁴

Ethnic Nationalities

There are currently at least 210 ethnic nationality political prisoners in Burma's detention centres, jails and labour camps.²⁵

On Shan National Day 2005, a group of senior Shan politicians including the Shan Nationalities League for Democracy President U Khun Htun

²² Ko Ko Gyi opinion editorial in *Democratic Voice of Burma*, 7 August 2007. For his full political prisoner profile, see http://www.aappb.org/biography_1.html.

²³ Htay Kywe, in a letter to UN Secretary-General Ban Ki-moon while in hiding, September 2007. For his full political prisoner profile, see http://www.aappb.org/biography_1.html.

²⁴ 88 Generation Students, ABFSU & ABMA statement issued 10 December 2009.

²⁵ AAPP figures as of 28 February 2010.

Oo and Secretary-General Sai Nyunt Lwin met to discuss political transition. Two days later they were arrested and charged with treason, unlawful association, disrupting the National Convention, and breaking censorship laws.²⁶

*We didn't commit any crime. We reaffirm our aim to empower our people to bring peace, justice and equality to the people.*²⁷ U Khun Htun Oo, sentenced to 93 years in prison.

*The negotiation between the government, NLD and ethnic nationalities is the way that can bring about national unity as well as the best national roadmap [for democracy].*²⁸ Sai Nyunt Lwin, sentenced to 85 years in prison.



KHUN HTUN OO



SAI NYUNT LWIN

In February 2009, the United Nationalities Alliance²⁹ issued a statement in support of the NLD's demands for the release of all political prisoners and a review of the 2008 Constitution, and affirmed, "...until and unless the military regime shows its sincere will to make positive changes and start an all-parties inclusive process of democratization and national reconciliation, we [the UNA] will not participate in the 2010 election and we will not recognize that election as legitimate."³⁰

²⁶ See political prisoner profile at: <http://www.aappb.org/biography.html>

²⁷ Khun Htun Oo, in a message smuggled out of prison.

²⁸ Sai Nyunt Lwin, speaking at a Central Executive Committee meeting of the SNLD on 9 January 2004.

²⁹ Founded in 2002 by the Shan Nationalities League for Democracy and other ethnic nationality parties which won seats in the 1990 elections. See **III. NATIONAL RECONCILIATION AND POLITICAL PRISONERS** for details.

³⁰ See *Statement by the United Nationalities Alliance*, United Nationalities Alliance, 20 February 2009.

Women

Women have played an important role in the pro-democracy movement. There are currently at least 177 female political prisoners in detention.³¹



NILAR THEIN

Only if we end this bad system will the future of Burma's people, including my daughter's, be bright. I love my daughter. I had to leave her, but I believe she will later understand why.

In August 2007, 88 Generation Students member Nilar Thein's husband Kyaw Min Yu a.k.a. Jimmy was arrested, but Nilar Thein managed to escape. She led a protest march the next day with other women activists, but then had to leave her baby with relatives and go into hiding. She was on the run for over a year before she was caught and sentenced to 65 years in jail.³²

Mar Mar Oo, an activist who first became involved in 1988 uprising was later involved in the 1996 student movement. She was sentenced to 14 years in prison for her participation in 1996, but was released early in 2005. She then joined the 88 Generation Students Group.³³ She is now serving a 70-year sentence, 5 years more than other members of the group as the remaining 5 years of her previous sentence were added to her new 65-year sentence under the terms of Section 401 of the Criminal Procedure Code, the legal mechanism commonly used for amnesties and early release from prison.



MAR MAR OO

See VI. AFTER RELEASE FROM PRISON: ONGOING HUMAN RIGHTS ABUSES.

Their role in shaping civil society

A strong, independent civil society is important to hold government to account in any democracy. Both current and former political prisoners

³¹ AAPP figures as of 28 February 2010.

³² Nilar Thein and her husband Jimmy are both former political prisoners who actually met in jail, and joined the 88 Generation Students after their release from Tharawaddy prison. See Nilar Thein's full political prisoner profile at http://www.aappb.org/biography_2.html.

³³ See her full political prisoner profile at http://www.aappb.org/biography_2.html.

have an important role to play at every level of civil society in Burma, to shape it and prepare it for democracy. This includes teaching others about their rights, and how to claim them. They must have their criminal records erased, so that they are free to establish civil society organizations without harassment.

Monks, nuns, students, lawyers, journalists, doctors, teachers, human rights defenders, labour activists and ordinary citizens have all been imprisoned. Some have chosen to be politically active or have stood up for their rights, while others have played a supporting role – providing food or shelter; defending an activist in the course of their work as a lawyer; or teaching others about their rights.

After their release, many former political prisoners find there are significant barriers to finding employment and actively participating in politics and society, partly due to their criminal records. See VI. AFTER RELEASE FROM PRISON: ONGOING HUMAN RIGHTS ABUSES. Yet they strive to complete their education and find a meaningful way to contribute to society.

Monks³⁴

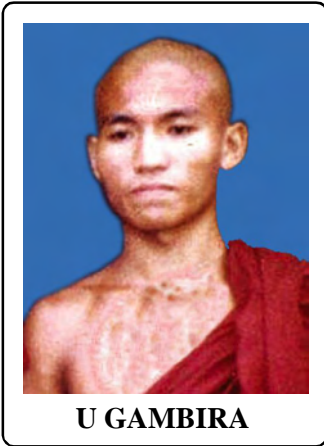
The *Sangha* or monkhood is Burma's most revered institution. It is also very large, with an estimated 300,000 to 400,000 monks and 50,000 nuns in Burma today. The *Sangha* has a symbiotic relationship with Burmese civil society, providing spiritual guidance and tending to the communities' social and educational needs, and receiving food and finance in return from lay people (known as 'making merit').

Historically, monks have played an important role in both politics and civil society in the country. They were influential in the movement for independence from British colonial rule in the first half of the twentieth century, and led anti-government demonstrations and calls for political, economic and social reforms at critical junctures. In the aftermath of Cyclone Nargis in May 2008, monks and lay people stepped into the breach left by the military regime. Monks provided shelter for survivors in the monasteries, and facilitated independent aid distribution.

There are currently at least 253 monks and 6 nuns in prison, many of them detained for their roles in the September 2007 'Saffron Revolution'.³⁵ Usually after arrest they are forcibly disrobed. Many

³⁴ For a comprehensive review of the treatment of Burma's Buddhist monks at the hands of the military regime, see *Burma: A Land Where Buddhist Monks Are Disrobed And Detained In Dungeons*, AAPP, November 2004; and *The Resistance of the Monks: Buddhism and Activism in Burma*, Human Rights Watch, September 2009.

³⁵ AAPP figures as of 1 February 2010.



have been tortured and some have also died in detention.³⁶ Monks and nuns are commonly charged with ‘insulting religion’³⁷; ‘inducing a person to commit an offence against the State or public tranquility’³⁸ and ‘undermining the security of the Union or the restoration of law and order’.³⁹

The regime’s use of mass arrests, murder, torture and imprisonment has failed to extinguish our desire for the freedom that was stolen from us so many years ago. We have taken their best punch. Now it is the generals who must fear the

*consequences of their actions. We adhere to nonviolence, but our spine is made of steel. There is no turning back.*⁴⁰

Students

Burma has a long history of student activism, dating back to the turn of the twentieth century. Historically, students have always been at the forefront of demands for democracy and political and economic reforms, including under British colonial rule, in 1962, 1974, 1988, and 2007.⁴¹ Under military rule, students have frequently had their education interrupted when the junta closed down universities. Student activists imprisoned for their activities are usually denied the opportunity to complete their university education after release from prison. See VI. AFTER RELEASE FROM PRISON: ONGOING HUMAN RIGHTS ABUSES.

In August 2007, a new generation of student leaders announced the reorganization of the All Burma Federation of Student Unions (ABFSU), and continued protests after the arrests of leading members of the 88

³⁶ Monk U Arnanda died in January 2009. In October 1990, many monks participated in the boycott, *pattam nikkujjana kamma* or ðoverturning the bowlö, refusing to accept alms from members of the armed forces and their families. As punishment some were transferred to labor camps, and 19 monks died there.

³⁷ Sections 295 and 295(A) of the Penal Code.

³⁸ Section 505(b) of the Penal Code.

³⁹ Section 5(j) of the Emergency Provisions Act.

⁴⁰ U Gambira writing in the Washington Post. The article was published on 4 November 2007, the day he was arrested.

⁴¹ Smaller-scale student protests also took place in 1996, 1998 and 1999. For more resources on the history of the Burmese Student Movement, visit the website of the All Burma Federation of Student Unions (ABFSU).

Generation Students. There are currently at least 283 students imprisoned.⁴²

*I, on behalf of the all students in Burma, just want to say it is true that we students have been and are still losing our rights, including freedom of assembly, freedom of speech, freedom of expression, and freedom of thought. 20 year-old Phyto Phyto Aung, leading member of the ABFSU, sentenced to four years in prison.*⁴³



Lawyers, Teachers & Doctors



Lawyers who dare to represent political activists, and teachers and doctors who are perceived by the authorities to be 'politically active', have not escaped arrest. There are currently at least 12 lawyers, 28 teachers and 12 doctors in detention.⁴⁴ Lawyers frequently have their licences to practise law suspended or revoked after their release from jail. In November 2008, high-profile lawyers Aung Thein and Khin Maung Shein were sentenced to four months in prison on contempt of court charges brought against them whilst they were defending leading members of the

88 Generation Students group. Although they were initially able to practise law after their release in March 2009, they later had their licences to practise law revoked.⁴⁵

*Most lawyers make a living by conventional means but new lawyers will emerge to defend political activists.... There will always be defenders of the truth.*⁴⁶

⁴² This figure includes 41 members of the 88 Generation Students. AAPP statistics 28 February 2010.

⁴³ See her full political prisoner profile at http://www.aappb.org/biography_2.html.

⁴⁴ AAPP statistics, 28 February 2010.

⁴⁵ For more background information, please see AAPP media statement 'Defence lawyer's licence revoked in Daw Aung San Suu Kyi case', 16 May 2009.

⁴⁶ U Aung Thein, speaking from his home to the *Democratic Voice of Burma* whilst waiting for the authorities to take him to jail on 7 November 2008.

Labour Activists

Labour activists who attempt to organize unions or take complaints about instances of forced labour to the International Labour Organization (ILO) face arrest and reprisal.⁴⁷ There are currently at least 37 labour activists detained.⁴⁸

Su Su Nway is from a village where she and her neighbours were forced to repair roads without pay. In 2005 she courageously took the case to court, and won in a landmark ruling against local government officials by invoking international labour standards. Her legal victory was the first against the junta's long-standing practice of forced labour. In February 2006 she was sentenced to 18 months imprisonment on defamation charges, in retribution for the forced labour victory. Thanks to international pressure, she was released a few months later.



I don't feel happy or sad about my release because forced labor in Burma still exists. I will continue fighting against forced labor and all kinds of human rights abuses.....I took (my) prison uniform with me because I know that I will have to come back to prison until Burma gains democracy.⁴⁹ Su Su Nway is currently serving an eight and a half year sentence for her role in the Saffron Revolution.

Media Activists

In 2009 the New York-based Committee to Protect Journalists ranked Burma in the top five nations for imprisoning journalists, along with Iran, China, Cuba and Eritrea.⁵⁰ There are currently at least 42 media activists in detention, encompassing professional and 'citizen'

⁴⁷ This has been acknowledged by the ILO. See *Labor Pains [an interview with Kari Tapiola, Executive Director of the ILO]*, the Irrawaddy, 25 January 2010.

⁴⁸ AAPP figures as of 28 February 2010.

⁴⁹ Su Su Nway speaking in an interview with Democratic Voice of Burma after her release, 6 June 2006. She has been in and out of prison several times since then. See her political prisoner profile at http://www.aappb.org/biography_2.html

⁵⁰ See CPJ's 2009 Prison Census: *Freelance Journalists Under Fire*, 8 December 2009.

journalists, writers, poets and bloggers.⁵¹ Many have been arrested for providing information to the Burmese exile media.

Journalists find it difficult to continue in their profession after release from prison.

Eint Khaing Oo and Kyaw Kyaw Thant, two

journalists who were arrested after trying to help a group of Cyclone Nargis

survivors, were released under the September 2009 amnesty largely thanks to international pressure. Both Kyaw Kyaw Thant, editor of the 'Weekly Eleven' journal and Eint Khaing Oo, reporter with the 'Eco Vision' journal have since been let go from their media groups.⁵²



KYAW KYAW THANT



EINT KHAING OO

Former Political Prisoners



Dr. NAY WIN

In the aftermath of Cyclone Nargis, former political prisoners were amongst those who organised the distribution of aid, carried out fundraising, and even buried dead bodies.

The Group That Buries The Dead was set up by former political prisoners Dr Nay Win and Aung Kyaw San, who had previously been imprisoned for 15 and 6 years respectively. A number of students were also involved in the group's activities, including Dr Nay Win's

⁵¹ AAPP figures 28 February 2010.

⁵² See *Detained Journalists Can't Go Back to Old Jobs*, The Irrawaddy, 10 December 2009. Background: On June 10 2008, Kyaw Kyaw Thant and Eint Khaing Oo brought some cyclone survivors from Hlaing Thar Yar Township to the offices of the International Committee of the Red Cross (ICRC) and the United Nations Development Program (UNDP) in Rangoon. In the ICRC office, they helped translate for the cyclone survivors who complained about the neglect of the regime and requested assistance from the ICRC. While they were on the way to UNDP office, they were all arrested. The cyclone survivors were later released. The authorities accused the journalists of taking photographs of the damage done by Cyclone Nargis and sending them to foreign media. On 14 November 2008, Eint Khaing Oo and Kyaw Kyaw Thant were sentenced to 2 and 7 years respectively, charged under Sections 505(b) and 124(a) of the Penal Code.



AUNG KYAW SAN

daughter Phyto Phyto Aung (see Students above). They had been in hiding since their involvement in the Saffron Revolution, but came out to help after the cyclone. Six members of the group including Dr Nay Win and Aung Kyaw San are now serving sentences ranging from two to seven years.⁵³

Even after release, ex-political prisoners are at constant risk of re-arrest and imprisonment, and it is difficult for them to resume their former roles in politics and civil society.

“You have the right to demand your rights. Not until the world hears your cries, will you be free from your sufferings. It is the right time to assert the truth.”

88 Generation Group

⁵³ Phyto Phyto Aung, Shein Yazar Tun and Lin Htet Naing aka Aung Thant Zin Oo were sentenced to four years each. They were charged with forming an illegal organization, unlawful association and making statements conducive to public mischief. Dr Nay Win, Aung Kyaw San, and Phone Pyeit Kywe were given 7 years imprisonment each. For background, see AAPP Cyclone Nargis Anniversary Report, May 2009.

VI. AFTER RELEASE FROM PRISON: ONGOING HUMAN RIGHTS ABUSES

The military regime continues to deny the very existence of political prisoners, which in itself is a barrier to national reconciliation, as they represent the struggle for democracy, human rights, equality and self-determination. While activists remain in prison or continue to be arrested for voicing their political dissent, ordinary people will have no trust in any political process proposed by the regime.

The government has said many times that there are no political prisoners in Myanmar [Burma]. They are, indeed, the ones who are serving their terms in accordance with the law for their harming stability and peace of the State, and committing other crimes. Editorial in the New Light of Myanmar, the junta's mouthpiece.¹

Regardless of the circumstances, the release of a political prisoner is rarely unconditional. Political prisoners are seldom allowed to resume their lives and their former roles in peace.² The physical and psychological scars of torture, ill-treatment, and the denial of healthcare last long after a person is released.³ These challenges to rehabilitation are compounded by the social stigma attached to former political prisoners, partly because of their criminal records. The military regime also seeks to breakdown their identity, and to make them walking advertisements for the consequences of speaking out against the regime.

After release, former political prisoners face ongoing human rights abuses. They are constantly under watch by Military Intelligence (MI) and their network of spies and informers. They regularly face arbitrary arrest, and they and their families are harassed and threatened. They are denied education and employment opportunities. The pervasive climate of fear after decades of military rule means that friends and neighbours are sometimes afraid to associate with ex-political prisoners, in case they themselves are arrested. The authorities do their utmost to prevent former political prisoners from pursuing political activism.

¹ *The New Light of Myanmar*, 23 July 2009

² See for example the cases of lawyer U Aung Thein and journalists Eint Khaing Oo and Kyaw Kyaw Thant outlined in **V. POLITICAL PRISONERS: THEIR ROLE IN DEMOCRATIC TRANSITION.**

³ For a more detailed analysis of the impact of torture, ill-treatment and the denial of healthcare, see: *The Darkness We See: Torture in Burma's Interrogation Centers and Prisons*, AAPP, December 2005 and *Burma's Prisons and Labour Camps: Silent Killing Fields*, AAPP, May 2009.

The circumstances surrounding release

The different circumstances surrounding the release of political prisoners are complex. Regardless, the release of a political prisoner is rarely unconditional.

Most political prisoners are released after completing their full sentence, although in some cases the original sentence may have been extended several times. Some political prisoners have been released on parole. Others are offered parole or early release from prison, but only on condition that they sign a ‘bond’ under Section 401 of the Criminal Procedure Code [see below] promising not to take part in political activities after their release. This practice is arbitrary and not offered to all political prisoners, most likely in an attempt by the regime to create divisions amongst activists.

There have been six separate amnesties for prisoners since November 2004, mainly to appease the international community at perceived critical junctures.⁴ According to the ruling State Peace and Development Council’s (SPDC) own figures, 45,732 prisoners were released under those amnesties, but AAPP statistics show that only 1.3% of them were political prisoners.⁵

The regime uses Section 401 of the Criminal Procedure Code as the legal mechanism for those amnesties.⁶ Clause 1 of Section 401 grants the President of the Union power to suspend a sentence. Clause 3 gives power to the President of the Union to cancel the suspension of a sentence and order re-arrest of a person without a warrant, requiring that he or she must serve the remainder of the original sentence. These powers lie with the executive and not the judiciary. Clause 4 states “(4) The condition on which a sentence is suspended or remitted under section may be one to be fulfilled by the person in whose favour the sentence suspended or remitted, or one independent of his will.” [Emphasis added].⁷

⁴ See [Burma's Amnesty Announcement Draws Skepticism](#), *The Irrawaddy*, 14 July 2009.

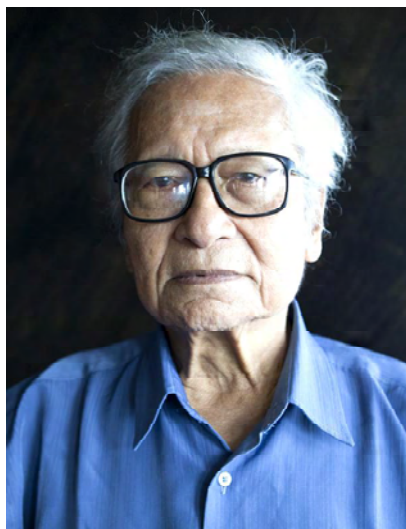
⁵ According to AAPP figures, 589 (or 1.3%) of them were political prisoners.

⁶ The amnesties in 2004 and 2005 were an exception to this. When head of intelligence General Khin Nyunt was ousted, other members of the junta tried to discredit and defame him by saying that certain prisoners had been falsely arrested and thus were never supposed to be in prison in the first place.

⁷ For the full text of Section 401, see http://www.blc-burma.org/html/Criminal%20Procedure%20Code/cpc_16-30.html

Former political prisoners simply want to be recognized as such, and to be released unconditionally:

I could not accept releasing me under section 401 of the Criminal Procedure Code after putting me in prison longer than I should have stayed.... I was released in overdue time after serving my full prison term. But they wanted to release me under their scheme [Section 401]. I argued with them on this point the whole of yesterday... I told them I want to be released as a political prisoner.⁸ U Win Tin, founding member of the NLD, released under an amnesty in September 2008.



U WIN TIN

Ongoing human rights abuses after release

AAPP recently conducted interviews with former political prisoners living in exile, to document the human rights abuses and difficulties they faced after their release from prison. Some names have been changed to protect identities.

a. Harassment and arbitrary arrest

After release, ex-political prisoners are constantly under watch by MI and their network of spies and informers. More often than not they are harassed and threatened, and sometimes arbitrarily arrested. These are all attempts to intimidate them into giving up political activism, or becoming informers themselves.

⁸ Interview with U Win Tin, *Conversation with 'Man of Steel', Mizzima*,

The surveillance can be very intrusive:

After release, they took me from the prison to the MI centre in the township. They said I should not talk to the media. Sometimes the MI rang me or visited my house. They did this twice in the first week. They took photos of me during these first visits, even when I went to give my father a kiss on the cheek. Khin Khin was sentenced to 10 years in prison under Section 5(j) of the Emergency Provisions Act and Section 17/1 of the Unlawful Association Act. She was released from prison in 2004.

Surveillance can carry on for many years after release:

MI came to my house, and watched me. They followed me when I left the house. If I went anywhere, they needed to inform someone, every time. I felt disappointed, but not afraid. I was worried it would be a problem for other people, mainly my friends. Even today there is still surveillance on my house. Thida Htway was sentenced to 29 years under Section 17/1 of the Unlawful Association Act, Section 17/20 of the Printers & Publishers Act, Section 13/1 of the Immigration Act and Section 5(j) of the Emergency Provisions Act. She was released in 2002.

The Emergency Provisions Act (1950)

Section 5(j):

“to affect the morality or conduct of the public or a group of people in a way that would undermine the security of the Union or the restoration of law and order”

Former political prisoners are sometimes offered incentives or threatened in an attempt to recruit informers for Military Intelligence:

After I was released from prison the first time, MI kept coming to visit me and calling me in for questioning. They tried to persuade me to become an informer for them. They told me that if I agreed to work for them, they would pay my family's debts. They also threatened to put me back in prison if I refused. I faced a choice between two paths. I could go to prison, or I could betray the struggle. As much as I cared about my

parents and sisters and brother, I knew it would be wrong to trade their financial security for a dishonest life. Bo Kyi was sent to prison twice. He was sentenced to a total of eight years under Section 5(j) of the Emergency Provisions Act. He was released in 1999.

Ex-political prisoners are sometimes subjected to arbitrary arrest, and detained for days at a time. This is especially common at times of small-scale demonstrations and political unrest:

I was arrested twice in 2006. The first time I was held for a week, the second time for two days. They asked me about a bomb explosion near my house. It was because they knew I was a former political prisoner and thought I could be involved. Min Min was sentenced to eight years under Section 17/1 of the Unlawful Association Act and Section 13/1 of the Immigration Act. He was released in 2005.

Another man relates:

In October 2006 some friends were leading a student demonstration and I went to watch, because it was near my home. MI saw me talking to some people there. I was arrested, and they accused me of leading that movement. I was held in Insein Annex prison for 45 days. Htay Aung was detained for long periods several times, and charged and put on trial twice. He was sentenced to a total of ten years, under Section 5(j) of the Emergency Provisions Act. He was released in 2002.

b. The denial of education and employment opportunities

Former political prisoners face many problems in finding work, because of their criminal records and their links with politics. This makes daily life very difficult, and impacts on their rehabilitation process:

After my release I went to my old office to get a job. Before my arrest they all loved me because I was the youngest. However, afterwards the relationship was very strange, so I didn't get a job. They were afraid of me and they were worried they would get into trouble. I tried to get a job in other companies, but they always wanted a copy of criminal records from the police

station. It is very difficult to get a job as a former political prisoner. Lae Lae Nwe was sentenced to 21 years under Section 5(j) of the Emergency Provisions Act and Section 17/20 of the Printers & Publishers Act. She was released in 2002.

Thida Htway relates:

There was no chance to work. I felt depressed because I couldn't find a job.

Employers also face threats and intimidation if they employ a former political prisoner:

I got a part-time job at a photocopy shop for my survival. Soon afterwards MI interrogated the shop owner. "Why did you employ him as your worker? Don't you know that he was a politician?". For an ordinary businessman, these are very dangerous words. He did not want to fire me, but he did. (Bo Kyi)

Many former political prisoners rely on support from friends and family to find employment:

I sold fish in the central market in Rangoon for a while, but when the owner of the fish factory found out I was involved in politics he kicked me out. After my release [the second time] I got a job working on my friend's construction site. Only former political prisoners would let me work with them. (Htay Aung)

Many former political prisoners were students at the time of their arrest, but are prevented from completing their education after release:

I couldn't continue my studies. The university wanted an appeal letter, saying I was sorry, asking for forgiveness and promising that I would not be involved in politics again. The letter was for the university and the military. I couldn't write this letter as I thought it was wrong. Aung Myo Thein was sentenced to eight years in prison under Section 5(j) of the Emergency Provisions Act and Section 17/2 of the Unlawful Association Act. He was released in 1995.

Min Min relates:

I wanted to continue my studies. I applied at university, but they rejected my application. The head of the university told me that he did not have approval from MI for me to study again.

c. Discrimination against former political prisoners and their families

Political detainees usually have their identity cards taken from them during the interrogation period. Former political prisoners often face difficulties and long delays in securing new identity cards, essential documents for daily life in Burma. Citizens usually receive their identity card around 2 weeks after they apply for it. Travel between towns is not permitted without an identity card, and it is very difficult to find employment without one:

After my release I was sent to Rangoon division police station, where they registered my release and took photos. They sent me to the township police station, where I had to submit passport sized photos. But when I went to the township immigration office to get an ID card, they would not issue it. I tried several times and even went to the township police station to ask for their help. They just told me to try again. I did, but again, nothing. I finally got one ‘under the table.’ (Aung Myo Thein)

There are similar difficulties with securing a passport:

I tried to get a passport, but I was finally denied at the last stage. I was told I was on the Special Police Investigation Force [formerly known as Special Branch police] black list. Aung Khaing Min was sentenced to seven years under 5(j) of the Emergency Provisions Act. He was released in 2002.

In many cases, family members of political prisoners also face similar difficulties:

The MI kept tabs on my whole family because we are a very political family, going back to my grandfather at the time of independence [from British colonial rule].

One younger sister and two younger brothers couldn't get ID cards either and they couldn't find jobs. It was because of my political family. (Aung Myo Thein)

Aung Khaing Min relates:

My family life was affected because of being on the watch list [under surveillance]. My sister quit her government job since there would be no promotion and she wasn't comfortable working there any more, with the thought of being watched. My family's life was never the same as before [my arrest].

d. Social exclusion

Most of those interviewed enjoyed the full support of their family after their release from prison. It was more common for old friends to disassociate themselves from former political prisoners:

After my release, one of the hardest things for me was adjusting to new relationships with friends. People were scared to be friends with me after release, because they were afraid of the association. (Min Min)

Thida Thway explains:

Some friends didn't tell me they were afraid, they just didn't call any more.

Some were ostracized in their wider community:

I lost my sense of community. MI harassed my neighbours and warned them not to have anything to do with me. I felt very isolated. May Lin was sentenced to seven years under Section 5(j) of the Emergency Provisions Act. She was released in 2002.

e. Forced into exile

All of those interviewed cited worries about being arrested and sent back to prison as their main reason for fleeing Burma:

My wife and I [both former political prisoners] took part in the Open Heart Letter Campaign [an 88 Generation Students solidarity campaign]⁹. The local authorities

⁹ See V. **POLITICAL PRISONERS: THEIR ROLE IN DEMOCRATIC TRANSITION.**

warned us not to collect the letters so we stopped for a while. But then we started again. The local authorities contacted my mother-in-law. They were very angry and wanted to know why we had disobeyed their orders. They told her we could be sent to prison again, so we fled. Thura Min was sentenced to seven years in prison under Section 5(j) of the Emergency Provisions Act. He was released in 1998.

Others also cited frustration at not being able to carry out political work, without the constant fear or arrest:

After I was released, I joined the 88 Generation Students. In 2007, Min Ko Naing [a leader of the group] gave a speech in front of the NLD headquarters. At the time I was living at Ko Ko Gyi's [another leader of the group] house. After the speech we were watched all the time. I couldn't stop worrying about being arrested. I felt frustrated because we could not carry out our work freely or in peace. I wanted to work for democracy, I didn't want to be in hiding. Aung Kyaw Oo was sentenced to a total of 19 years in prison under Sections 5(e) and 5(j) of the Emergency Provisions Act, and Sections 17/1 and 17/2 of the Unlawful Association Act. He was released in 2005.

Htay Aung explains:

I wanted to keep doing political work, but many of my close friends like Htay Kywe [a leader of the 88 Generation Students] were arrested. I felt lonely after they were arrested. I wanted to do something but I didn't want to go to prison again.

Life in exile in Thailand is difficult for former political prisoners. Most of them don't have legal documentation, and are at constant risk of arrest and deportation by immigration authorities. They are also cut off from their families:

I haven't had any direct contact with my family since 1997. I worry that being in touch with them will put them at risk, because of the work I do in exile. I miss them. My father died in 2005 and I only found out last year via a friend. Tate Naing was sentenced to three years in prison under Section 5(j) of the Emergency Provisions Act and Section 17/20 of the Printers & Publishers Act. He was released in 1992.

The choice to carry on with political activity

The former political prisoner's experience comes to define his or her life, past, present and future. Many explain that once they are a political prisoner, they are always a political prisoner, and only other individuals with similar experiences can fully understand them.

Almost all of those interviewed carried on with their political activity in Burma for a while after release, although usually in a different way than before, for security reasons:

I only did secret activities, because I thought it was more strategic to do things quietly. I never went to big anniversary celebrations [where political activists often gather]. I worked in the underground movement instead.
(Aung Myo Thein)

Those who didn't take part in political activities supported others instead:

I didn't do any political activities, such as demonstrations or distributing pamphlets because I was too scared of being arrested again. Instead I supported my colleagues who were still in prison. I used to take things to their families. (Khin Khin).

Some recently released high profile political prisoners have remained in Burma and carried on with their political activities, possibly afforded a degree of protection thanks to campaigns for their release by international organizations like Amnesty International. NLD co-founder U Win Tin and NLD MPs Dr. May Win Myint and Dr. Than Nyein were three of the nine political prisoners released under the September 2008 amnesty.¹⁰ U Win Tin spent a total of 19 years in prison after having additional sentences added to his original jail term of three years with hard labour.¹¹ Dr. May Win Myint and Dr. Than Nyein each spent over 10 years in prison.¹² All three were in poor health after being denied adequate medical care in prison.¹³ Despite this, all three quickly resumed their former roles within the NLD.¹⁴

¹⁰ See AAPP's monthly chronology report for September 2008.

¹¹ U Win Tin's original sentence was increased to eleven years (later reduced to ten), and in 1996 he was sentenced to a further seven years for his role in passing information about prison conditions in Insein jail and the harsh treatment inflicted on inmates to the United Nations Special Rapporteur on Human Rights in Myanmar [Burma].

¹² Dr. May Win Myint and Dr. Than Nyein were both held for additional periods under Section 10(a) of the State Protection Act.

¹³ Dr. Than Nyein suffered from liver problems, for which he was denied treatment. He went on hunger strike in prison and was transferred between prisons six times. Since leaving prison he has had surgery on his liver. U Win Tin was kept in solitary confinement of most of his 19 years in prison. Since leaving prison, he has undergone heart surgery. Dr. May Win Myint suffered from high blood pressure and arthritis in prison.

¹⁴ U Win Tin was a member of the Central Executive Committee of the NLD. Dr. May Win

U Win Tin has been an outspoken critic of the regime since his release, despite experiencing harassment from the authorities.¹⁵ His leadership has also helped reinvigorate the NLD.¹⁶ Dr. May Win Myint and Dr. Than Nyein have both recently been promoted to the Central Executive Committee of the NLD.¹⁷

Even after they are forced into exile, many former political prisoners carry on their opposition to the regime by working as journalists for the Burmese exile media, or within the pro-democracy movement



Ko Tate Naing (Secretary of AAPP)

Myint was head of the NLD Women's Wing, and Dr. Than Nyein was Vice-Chairman of Rangoon Division NLD.

¹⁵ U Win Tin has been harassed and followed by the authorities, and was also arrested and questioned after he wrote an opinion editorial article for *The Washington Post* in September 2009. See AAPP's monthly chronology reports for January and September 2009.

¹⁶ See *Interview: U Win Tin Calls For Unity*, Democratic Voice of Burma, 30 September 2008.

¹⁷ See *NLD Restructures Top Decision-Making body*, Mizzima, 14 January 2010.



Bo Kyi (Joint Secretary of AAPP)

For those of us who share the experience of being a political prisoner, it creates an unbreakable bond between us. We heard each other's screams under torture. We will never turn our backs on each other, or our friends and colleagues in prison. We will continue our work until they are all free. Bo Kyi, co-founder of the Assistance Association for Political Prisoners (Burma).

VII. CONCLUSIONS

The regime is forging ahead with its so-called ‘Roadmap to Democracy’, and is preparing for elections in 2010. Yet conflicts in the country remain unresolved, and people across Burma face a relentless cycle of human rights violations, poverty and fear.

An inclusive process of national reconciliation is urgently needed to resolve the current conflicts. Burma’s 2,100 plus political prisoners represent the struggle for democracy, human rights, equality and self-determination. Official recognition by the regime of all political prisoners, accompanied by their unconditional release, is a crucial first step in national reconciliation. Such a move would demonstrate genuine commitment on the part of the ruling regime to trust-building with democratic forces and wider society. As long as activists remain in prison or continue to be arrested for voicing their political dissent, ordinary people will have no trust in any political process proposed by the regime.

The SPDC’s planned 2010 elections will be based on the 2008 Constitution. Without tripartite dialogue for national reconciliation - with the official recognition and unconditional release of all political prisoners as a crucial first step - the elections will not be a solution for Burma. As part of tripartite dialogue, a comprehensive review of the 2008 Constitution to address issues of the exclusion of political leaders from positions of power, self-determination, human rights, impunity, and the independence of the judiciary is vitally important. In addition, elections can not be considered ‘free’ or ‘fair’ if they are held without erasing the criminal records of political prisoners to guarantee their right to participation. In practice this means their right to stand as political candidates, vote in independently-monitored free and fair elections, join political parties, and form political parties or civil society groups if they choose to do so.

As long as there are political prisoners, there can be no national reconciliation or democratic transition in Burma.

The ruling military regime must immediately take these vitally important steps:

- Officially recognize ALL political prisoners, and unconditionally release them under a genuine amnesty. Until political prisoners are publicly and formally recognized as such by the regime, they will likely continue to face ongoing human rights abuses such as harassment and arbitrary arrest, as well as exclusion from politics and society. Section 401 of the Criminal Procedure

Code should not be used as the legal mechanism for such an amnesty, as it does not provide for unconditional release of political prisoners. Instead a general amnesty motivated by genuine political will is needed.

- Begin an inclusive tripartite dialogue for national reconciliation with Daw Aung San Suu Kyi, U Khun Htun Oo and representatives of other ethnic nationality groups. National figures like Min Ko Naing, Zarganar and U Gambira can unite ordinary people behind that process. Similarly, at a local grassroots level political prisoners across the country can also encourage their communities to support the dialogue.
- Undergo a comprehensive review of the 2008 Constitution as part of tripartite dialogue for national reconciliation. This must address the following issues in particular:
 - a) The exclusion of political leaders from positions of power
 - b) Self-determination and equality for ethnic nationality groups
 - c) Independence of the judiciary
 - d) Protection of human rights
 - e) Impunity
- Erase the criminal records of all political prisoners. This will enable them to claim their rights stand as political candidates, vote in independently-monitored free and fair elections, join political parties, and form political parties or civil society groups, as part of genuine democratic transition.
- Cease ALL human rights violations against the people of Burma. This includes the denial of the rights to freedom of expression, association and assembly. It also includes arbitrary arrest, detention, torture, unfair trials, ill-treatment, prison transfers to remote jails, and the denial of medical care for political prisoners. The regime must also stop rape and sexual violence, torture and extrajudicial killings, forced displacement, land confiscation, destruction of villages, arbitrary taxation and restrictions on freedom of movement carried out against civilians in ethnic nationality areas.

The Role of Political Prisoners in the National Reconciliation Process



Assistance Association for Political Prisoners