



Assistance Association for Political Prisoners (Burma)

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**Submission to the
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of
Burma**

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Executive Summary

The Assistance Association for Political Prisoners (AAPP) provides information for sections B, C and D of *the summary of stakeholders' information*.¹ Drawing on recent AAPP research and interviews with former political prisoners, this submission highlights concerns regarding Burma's compliance with its international human rights obligations in relation to political prisoners and conditions of incarceration. There are 42 prisons in Burma and 109 labour camps.² The deplorable conditions in these places are well-documented: incommunicado detention, torture, poor diet, substandard hygiene levels and denial of adequate medical care.

Section B. Normative and Institutional Framework

In Burma, there are at least 2,170 political prisoners, reflecting the systematic denial of fundamental freedoms of expression, opinion and association.³ Their treatment violates the right to life and dignity, to be free from torture, and the right to health and an adequate standard of living. This treatment is meted out to all prisoners, without distinction to age, health and the special needs of women, children and those with disabilities. The nature of their arrest and the judicial system through which they are sentenced are illustrative of the lack of rule of law and a culture of impunity, operating in Burma. The State Peace and Development Council (SPDC) is obliged under national and international law to protect the rights of prisoners; the conditions of detention should not aggravate the suffering inherent in imprisonment. The UDHR articulates the basic rights that all UN member states must protect. Several of its provisions, such as the right to life, and to be free from torture, are peremptory norms of international law. Burma is party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). These treaties are supplemented by instruments specific to the treatment of those in detention.⁴ Burma's Jail Manual guards against ill-treatment of prisoners, though its provisions themselves fall short of international standards.⁵ The most fundamental protection for prisoners is the absolute prohibition on torture. This prohibition is reflected in Burma's domestic law. The Burmese Penal Code prohibits 'hurt and grievous hurt' during interrogation⁶ and outlaws the injury of anyone by a public servant. Though such provisions indicate a prohibition of torture, the failure to explicitly define and designate torture as a grave crime, in Burmese law, allows torture to take place more easily.

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

Torture

Torture is endemic in Burma's interrogation centres and prisons. Evidence suggests it has become a cultural norm, amongst the military, police and security officials, for extracting false confessions, creating a climate of fear and as a punishment. AAPP has documented hundreds of cases of torture experienced by political prisoners, dating back to 1988 and as recent as 2010.⁷ Almost all political prisoners are beaten during interrogation. Some are subject to extreme physical assaults resulting in internal bleeding, unconsciousness and sometimes death. Beatings include being punched in the face, kicked in the head, beaten with rifles, sticks and iron bars. Deprivation of food, water and sleep is common during interrogation. A political prisoner, in 2009, was denied sleep for 12 days and food for 8 days during the interrogation period.⁸ Political prisoners report being made to stand or remain hooded for days at a time. Other reported torture methods include: electric shock; burning; the "iron road", rolling an iron rod up and down the shins until the skin peels off; "the helicopter", being suspended from the ceiling by the arms and spun around while beaten. Sexual abuse has been reported by both male and female prisoners, including the psychological torture of threatening to rape. Reported injuries from torture include: paralysis, hearing loss, brain damage, fractured bones. Solitary confinement is routine, and the

practice is not motivated by legitimate penological concerns but a political will to demoralize and marginalize political prisoners. The most notable case of solitary confinement is Min Ko Naing, kept in 'solitary' for nearly 16 years in Sittwe Prison.⁹ In the opinion of the Special Rapporteur for Torture, the prolonged isolation of detainees may amount to torture. The use of prolonged solitary confinement, experienced by political prisoners, amounts to torture. The conditions in solitary cells are worse than regular cells. Prisoners are forced to wear punishment shackles,¹⁰ some for periods as long as one year. They are not allowed to clean out their toilet bucket or bathe for an entire month. All political prisoners face severe restrictions on their links to the outside world. They can not receive letters, phone calls are not permitted, reading materials are strictly censored. Victims of torture have no effective mechanism to seek redress and the government denies human rights monitors and the ICRC access to prisons. International guidelines on investigating torture require that officials implicated be removed from positions of power, but in Burma, it is the prisoners who complain about prison conditions that are often punished, transferred, tortured and in some instances have their sentences arbitrarily extended.

AAPP calls on the SPDC to:

- Designate and define torture as a specific crime of the utmost gravity in the Burmese Penal Code, in accordance with the definition in the Convention Against Torture.
- Ensure that confessions, or other evidence obtained through torture, are never invoked in a court of law and no statement of confession made by a person deprived of liberty, other than one made in presence of a judge or a lawyer, should have a probative value in court.
- Abolish prolonged solitary confinement, which may amount to torture.
- Immediately ratify the Convention Against Torture.

The right to life, liberty and security of person

The arbitrary deprivation of life is a grave human rights violation, regardless of whether the death is from illegal execution, torture, excessive force or from life threatening conditions during detention. The SPDC are guilty of all of these. There was no accountability for the killings, by soldiers and riot police, of at least 36 inmates at Insein Prison, in May 2008, during Cyclone Nargis. Following the incident, prison authorities conducted an investigation that resulted in the deaths of four inmates during interrogation. Nine others later died from the injuries sustained during interrogation. AAPP has recorded the deaths of 144 political activists during incarceration, since 1988, as a direct result of severe torture, denial of food and medical treatment. Many die from curable diseases such as tuberculosis or Malaria.¹¹ In May 2010, political prisoner Ko Kyaw Soe, age 39, died in Myingyan prison due to prolonged ill-treatment in custody and the denial of medical treatment for respiratory problems. Buddhist monk U Thilavantha died on 26 September 2007, in Myitkyina hospital, from injuries sustained in custody. He was arrested by soldiers at his monastery in Myitkyina in Kachin State. Witnesses reported that soldiers severely beat him while in custody. Aung Hlaing Win, NLD member, arrested 1 May 2005, was tortured to death in No 1. Military Security Affairs Unit interrogation centre and died 8 May 2005. The forensic doctor testified that there were 24 external and internal wounds on his body.¹² However, the authorities claimed he died from pneumonia and a fatty liver. The families of political prisoners have sometimes been offered bribes to remain silent about the cause of death, as happened with Aung Hlaing Win; and the authorities cremate the body before the family can see it.

Political activists "disappear" for periods of several hours to several weeks or more, and some never reappear. The prohibition of enforced disappearance is a rule of international humanitarian and human rights law, and its prohibition is absolute. Such disappearances, in

Burma, are generally attributed to authorities detaining individuals for questioning and to the army's practice of seizing citizens for portering or related duties, without the family being notified.¹³ AAPP documented the disappearance of 15 political prisoners who never reappeared.¹⁴ The extent of the problem of enforced disappearances in Burma remains to be investigated. The likely fate of the disappeared is torture leading to death.

AAPP calls on the SPDC to:

- Allow an independent investigation into the deaths of those in custody; it should include relatives in the process, make the results public and hold accountable anyone found responsible for deaths, torture, mistreatment and medical negligence, and prosecute them, including anyone who failed to prevent these crimes.
- Allow individual monitoring, by the ICRC, of detainees and prisoners to prevent extrajudicial executions; enforced disappearances of people under arrest; torture; mistreatment; and to safeguard the physical and psychological health of prisoners.

Administration of Justice and the Rule of Law

Military Intelligence search, arrest, detain and interrogate without warrant anyone deemed political, despite the Burmese Criminal Procedure Code containing provisions for judicial oversight of arrests and detentions, as does the UN Body of Principles.¹⁵ The State Protection Law allows for detention without charge or trial for up to five years and is frequently used to extend an already arbitrary and unjust detention. Those held under this Law have included Aung San Suu Kyi. The UDHR stipulates: “No one shall be subjected to arbitrary arrest, detention or exile.” All former political prisoners interviewed by AAPP were held longer than 48 hours without warrant and without being brought before a judicial authority to be informed of the charges against them. Political prisoners are often held incommunicado, denied access to legal representation and it is sometimes several months before they appear before a judge or their family is informed. It often lasts until a confession is obtained. In Burma, several secret interrogation centres exist. Many political prisoners are kept in government ‘guest houses’ or on military bases, which prohibit access by civilians. The arrest and detention procedures of the SPDC raise the possibility that the vast majority of political prisoners, if not all, in Burma, are in arbitrary detention, according to the criteria outlined by the UN Working Group on Arbitrary Detention.¹⁶ The UN General Assembly declared that “prolonged incommunicado detention” and “detention in secret places”, facilitates the perpetration of torture and other ill-treatment and can in itself constitute a form of such treatment.¹⁷

There have been six amnesties for prisoners since November 2004. 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 prisoners¹⁸. They are released under Section 401 of the Criminal Procedure Code, which grants the President power to suspend a sentence. Clause 3 gives power to cancel that suspension and order re-arrest of a person at any time without a warrant, requiring they serve the remainder of the original sentence. These powers lie with the executive and not the judiciary¹⁹. The arbitrary nature of this policy and the lack of judicial oversight further illustrates the lack of the rule of law in Burma.

Rights of the child in the justice system

The CRC protects children from torture and provides that children deprived of their liberty shall be treated with respect for the inherent dignity of the person and stipulates that detention “shall be used only as a measure of last resort”.²⁰ Contrary to international standards and to Burma’s own Jail Manual,²¹ children are not separated from adult prisoners, are handed down long sentences, and are equally subject to the prisons’ grossly inadequate conditions. Young people

are imprisoned because of their political beliefs or activities in student politics, in violation of CRC.²² A number of student leaders, some when still in high school, have been arrested and imprisoned and subjected to cruel and degrading treatment and torture.

AAPP calls on the SPDC to:

- Officially recognize all political prisoners, erase the criminal records of all political prisoners and unconditionally release them under a genuine amnesty.
- Ensure those arrested are not held in facilities under the control of their interrogators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which should not exceed a period of 48 hours.
- Enable interrogation to take place at official centres, and abolish under law secret places of detention.
- Ensure that all persons in detention are able to exercise their right to legal counsel, to appeal their detention and to a fair trial.
- Release persons convicted by military tribunals or special security courts or re-try them before courts that meet international fair trial standards.
- Ensure that the composition of the judiciary is fully consistent with the Basic Principles on the Independence of the Judiciary by applying particularly the principle of immovability of judges.
- Ensure that prisoners or detainees under the age of 18 are kept in separate facilities from adults.

The Right to health and an adequate standard of living

International law and standards protect prisoners against discrimination in receiving health care; all people have a right to the highest attainable standard of health. Furthermore, the Committee Against Torture found that failure to provide adequate medical care can violate the prohibition of cruel, inhuman or degrading treatment. International standards assert that “all necessary medical, surgical and psychiatric services shall be provided” in prisons.²³ There is a desperate shortage of medically trained staff and medical facilities in prisons. There is one doctor for every 7,314 prisoners.²⁴ At least 12 prisons do not have a resident doctor. It is evident that untreated injuries from torture, long-term imprisonment, transfers to remote prisons and denial of medical treatment is a taking a toll on prisoners’ health. As of June 2010, there were at least 136 political prisoners in poor health, 19 requiring urgent medical treatment.²⁵

Since November 2008, at least 275 political prisoners have been transferred to remote prisons, in malarial zones, with extreme weather conditions, where there are no prison doctors.²⁶ Political prisoners are not given preventative medicines or mosquito nets. Medical supplies in prisons are inadequate and often only obtained through bribes to prison officials. It is left to the families to provide medicines and food, but prison transfers prohibit this. Often prisons are hundreds of miles from the political prisoner’s hometown, and the travel costs too high. Sometimes, the authorities may decide, for ‘security’ reasons, to forbid all family contact. Regardless of their illness, prisoners report receiving the same medication and are given fake or sometimes the wrong medication. Prison officials took common criminals to the local hospital for treatment but were required to seek authorization from higher authorities before allowing political prisoners to seek medical assistance outside the prison, resulting in their waiting for weeks or sometimes months to receive treatment for life-threatening and chronic problems. Hla Myo Naung, in need of urgent medical care, went blind in one eye while in prison and is now experiencing similar symptoms in his other eye. When his family requested treatment he was transferred to Myitkyina Prison, where there is no doctor. Myo Yan Naung Thein, 88 Generation

member, in Thandwe Prison, never received treatment after severe torture, in December 2007, which has left him partially paralysed.

AAPP can confirm that malnutrition, poor sanitation and unclean water are a serious problem throughout the prison system, posing a major health risk. Many prisoners face starvation. International standards require that prisoners be supplied with “food of nutritional value adequate for health and strength, of wholesome quality.”²⁷ Prisoners receive a one inch cube of meat once a week. In many cases, the food is rotten, half cooked, with stones and insects, resulting in food poisoning and gastric ailments. A political prisoner reported that the water well and sewage holes are so close together, in Sitwe Prison, Arakan State, that, during the rainy season, sewage flows into the drinking water, causing cholera outbreaks and many prisoners to die. International standards require that prisoners be issued sufficient and clean bedding.²⁸ Yet, in Burma, mattresses are filthy and there are infestations of bed bugs, scabies and lice. In many prisons, criminal prisoners are not provided with any blankets and political prisoners are provided with one. In punishment cells, there is no bedding whatsoever. Some prisons are so poorly constructed as to leave the prisoners exposed to the elements, a serious health risk during the rainy season.²⁹

Tuberculosis, malaria and HIV are a serious threat in Burma’s prisons, due to overcrowding, lack of hygiene, lack of medical care and exposure to extreme climates. Insein Prison, houses about 9,000 to 10,000 inmates but its capacity is about 6,000. Sick and healthy prisoners are routinely mixed together. Inmates’ reliance on shared razor blades promotes the transmission of Hepatitis and HIV. Re-using needles is common place, with medical staff using the same needle on a number of different prisoners³⁰.

Women’s rights to health

In Burma’s prisons, the medical, hygiene and nutritional needs of women are not being met. While both men and women experience deficiencies in the medical care received in prison, certain deficiencies are discriminatory due to the disproportionate impact they have on women. There is an obligation, under CEDAW, to “ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation”.³¹ In the case of the 174 women political prisoners, these rights are denied, as evidenced with Kay Thi Aung, who miscarried in her second trimester, in prison. Despite being pregnant, she was sentenced to 26 years in prison for providing aid during Cyclone Nargis, and transferred to Tavoy Prison, almost 400 miles from her family in Rangoon. Political prisoners have reported witnessing prisoners giving birth in prison without any medics and only prisoners to assist the delivery³².

AAPP calls on the SPDC to:

- Ensure enough funding for the prison budget to create conditions consistent with international standards. Funding should be allocated for facility renovation, upgrading water and sanitation facilities, adequate food and adequate health services.
- Stop sending political prisoners to remote areas away from their families; and ensure prisoners are able to receive visits from their family throughout their detention.
- Establish medical clinics at each prison with a consistent supply of essential medications and a minimum capacity to conduct TB and HIV testing and treatment.
- Develop gender-specific and culturally appropriate detention standards to meet the medical and mental health needs of women and refrain from detaining women who are pregnant or nursing infants, unless access to antenatal and maternity services are guaranteed.

ANNEX

End Notes

¹ As stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*.

² Director General, of Prisons Department, Zaw Win, reported in http://www.irrawaddy.org/article.php?art_id=17493;

³ AAPP Monthly Chronology, June 2010; Articles 18, 19, and 20 UDHR

⁴ Relevant instruments include: the UN Standard Minimum Rules for the Treatment of Prisoners the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Basic Principles for the Treatment of Prisoners.

⁵ The Manual of Rules for the Superintendent and Management of Jails in Burma (Jail Manual) was written during Burma's colonial times. Section V, which allows for whipping, up to 30 lashes, as a punishment, falls short of international standards.

⁶ Articles 330 and 331 of Burmese Penal Code

⁷ Interviews with former political prisoners on file with AAPP, 2000 – to date

⁸ See interview in Annex

⁹ Min Ko Naing, after his sentencing in 2008, for his role in the August 2007 demonstrations, was transferred to Kengtung prison in Shan State, where he remains, in solitary confinement, at the time of reporting.

¹⁰ Punishment shackles are not only extremely heavy, weighing 6 kg, but have an iron bar between the feet keeping the legs permanently astride. The bar is usually 1.5 to 2 ft but some reported 6 inches, causing extreme pain and making walking near impossible.

¹¹ Htay Lwin Oo, who died in Mandalay Prison in December 2008, was suffering from TB and Thet Win Aung, who died in Madalay Prison October 2006, from cerebral malaria

¹² See case file in Annex

¹³ US State Department Human Rights: Burma Report, 2009

¹⁴ See Annex for details

¹⁵ Sections 61, 81, 100 and 167 of the Burmese Criminal Procedure Code

¹⁶ Three categories have been outlined to determine whether a person is being arbitrarily detained: when there is no legal basis to justify the deprivation of liberty; when the deprivation

of liberty violates certain articles of the UDHR and the International Covenant on Civil and Political Rights; when international norms relating to the right to fair trial are ignored or only partially observed.

¹⁷ The general recommendations of the UN Special Rapporteur on Torture state: Torture is most frequently practiced during incommunicado detention. Incommunicado detention should be made illegal.

¹⁸ AAPP Report, *The Role of Political Prisoners in the National Reconciliation Process*, 2010, pg 53

¹⁹ For the full text of Section 401, see http://www.blcburma.org/html/Criminal%20Procedure%20Code/cpc_16-30.html

²⁰ Children are defined as those under 18 years of age, in Article 1 of CRC, as does Burma's Jail Manual.

²¹ CRC art. 37(a) (b) and (c); and Jail Manual, Part One, Section XIII - Juvenile Prisoners; and 1984 Prisons Act, section 27. The Prison Acts specifies that male prisoners under the age of 21 should be kept separate from adult prisoners, and, of these, those who have not arrived at puberty should be separated from those that have.

²² Article 13, 14, and 15 of CRC protect the rights of children to freedom of expression, thought, peaceful assembly and association.

²³ UN Standard Minimum rules for the Treatment of Prisoners, para. 62

²⁴ Burma's prison department has 34 doctors, 19 medical attendants and 22 nurses for a total of 248,664 prisoners and detainees in 42 prisons and 109 labor camps, according to Director General, of Prisons Department, Zaw Win, reported in http://www.irrawaddy.org/article.php?art_id=17493;

²⁵ AAPP Monthly Chronology, June 2010

²⁶ According to the World Health Organisation, morbidity rates for malaria in Burma are highest in Arakan, Karen and Kayah states, and Sagaing and Tenasserim Divisions, where high profile political prisoners were transferred.

²⁷ UN Standard Minimum Rules for the Treatment of Prisoners, para. 20(1).

²⁸ UN Standard Minimum Rules for the Treatment of Prisoners, para. 19.

²⁹ Interviews with former political prisoners on file with AAPP, 2000 – to date.

³⁰ Ibid.

³¹ Article 12 CEDAW

³² Interviews with former political prisoners on file with AAPP, 2000 – to date.

Application for revision of Aung Hlaing Win's case

**Yangon High Court
2005 Criminal Revision Case No. 595/ b**

Ma Hnin Sandar ----- Applicant
No. 19, Aung Myay Thar Zi Kan Street
No. 1 Quarter, Kamaryut Township
Yangon

Versus

Union of Myanmar ----- Respondent

Application for revision in accordance with Paragraph 5 (e) of 2000 Judicial Act

Submitting application to High Court for revision on the judgment of Yangon Division Court summarily dismissing the Criminal Revision Case No. 754/ 2005 on 9 September 2005

Ref: Criminal Regular Case No. 960/ 2005 (Ma Hnin Sandar versus Lt. Co. Min Naing and six) which was dismissed by Mayangone Township Court on 4 July 2005 in accordance with Section 203 of Criminal Procedure Code, and revision for that submitted to and summarily dismissed by Yangon Western District Court and Yangon Division Court

Brief description of the case

The applicant was told by some witnesses that her husband (the late) Ko Aung Hlaing Win, 30, was arrested and brought in handcuffs by two anonymous persons while having dinner at 'Lucky' restaurant n No. 1 Quarter of Kamaryut Township at 7:30 pm on 1 May 2005. Thus the applicant went to Kamaryut Township Police Station at about 10 pm that night and reported the disappearance of her husband.

On 10 May 2005, Lt. Col. Min Naing and group arrived at the Quarter PDC office of Kamaryut Township, where the applicant lived, summoned the applicant and her father U Mya Soe (aka) Shwe Jo and said that Ko Aung Hlaing Win had died on 7 May 2005 and asked them to receive one hundred thousand kyats. When the applicant refused to accept the offer and demanded just to give back the corpse, Lt. Col. Min Naing told her that the remains was cremated at 'Yay-Way' cemetery at 2:30 pm that day.

On 17 May 2005 the applicant submitted a complaint to take action against the responsible persons concerning Ko Aung Hlaing Win's death at Kamaryut Police station and the police told that Mayangone Police station had already opened a case related to that case. Therefore the applicant submitted her complaint to Mayangone Police station and the police told her that the recorded case number was Police Case No. pa/ 11/ 2005.

It was learned that, according to the official report from Mayangone Police station, the Mayangone Court of Justice had made the inquest for the Criminal Miscellaneous Case No. 433/ 2005- State versus Aung Hlaing Win- from 1 June 2005 to 7 June 2005 by investigating Pol. Station Officer Pol. Lt. Wyint Wai and Pol. 2nd Lt. Aung Kyaing form Mayangone Police

station and members of Quarter PDC, Capt. Sai AUng Win and Lt. Zaw Min Htike form Military Security Unit No. 1, the forensic doctor Dr Zaw Zaw Oo of North Okkalarpa Hospital and Pol. 2nd Lt. Hla Thoung from Kamaryut Police station.

The court had dismissed the applicant's request to allow her to join the inquest in order to reveal the truth as well as to help the court, and to examine proper witnesses and to ask them necessary questions.

The inquest of Mayangone Township Court of Justice for the Criminal Miscellaneous Case No. 433/ 2005- State versus Aung Hlaing Win- was a one-sided hearing based on the report of Mayangone Police station. On 9 May 2005 the case was judged merely by basing on the final statement of Dr Zaw Zaw Oo that Ko Aung Hlaing Win's death was due to chronic disease of an enlarged and fatty lever and due to the inflammation of chronic tonsillitis, pneumonia, carditis and nephritis.

The Mayangone Township Court dismissed the request of the applicant, spouse of the dead, to obtain official copies of the witnesses' statements and the court's judgment for the inquest of the Criminal Miscellaneous Case No. 433/ 2005. Therefore the applicant submitted complaints to Yangon Division Court and to the Director-General of High Court to correct it but received no response.

The applicant reported Ko Aung Hlaing Win's death case to Mayangone Township police station but the police did not make inquiry and therefore she submitted complaint to Mayangone Township court to take actions for the Criminal Regular Case No. 960/ 2005 (Ma Hnin Sandar versus Lt. Col. Min Naing and six). Mayangone Township Court had received the applicant's complaint on 29 June 2005 but postponed the trial to 4 July 2005, heard the applicant's statement with affidavit in accordance with Section 200 of the Criminal Procedure Code, and passed the judgment dismissing the case in accordance with Section 203 of the Criminal Procedure Code.

Reasons for revisions

1. On 10 May 2005, Lt. Col. Min Naing and group came to the applicant and her father, U Shwe Jo, told that Ko Aung Hlaing Win died on 7 May 2005, and offered them one hundred thousand kyat but the applicant refused it and demanded to return the corpse, it is mentioned in the complaint letter. As Lt. Col. Min Naing replied that the corpse had been cremated at about 2:30 pm that day, this made the family report the complaint. Again, the applicant after listening personally herself to Mayangone Township Additional Judge 1 court's trying of the Criminal Miscellaneous Case No. 433/ 2005 (state versus Aung Hlaing Win), the fact appeared that Ko Aung Hlaing Win was arrested and led to No. 1 Military Security Unit and investigated there. According to the forensic doctor's testimony that there were wounds on Ko Aung Hlaing Win's body, it has been prima facie evidence to take actions against the accused but in spite of is, Mayangone Township Court denied to admit the applicant's complaint and therefore it is legally wrong doing so.

2. Mayangone Township Court deny to investigate the complaint because it considered that the case need not to be processed as it had already been judged after making inquest in accordance with Section 174 of the Criminal Procedure Code by the court of the Additional Judge (1). On the contrary the applicant made the complaint against the accused persons at the court to make investigation. According to Section 202 of the Criminal Procedure Code, the Mayangone Township Court had the authority to allow someone to make investigation. But the court denied doing so and therefore it is tantamount to a denial of the provision of law.

3. Mayangone Township Judge, to whom the applicant submitted the Criminal Regular Case No. 960/ 2005, did not thoroughly study about the forensic doctor's testimony for the Additional Judge (1) Court's inquest and at the same time there is no obvious legal evidences concerning the judgment of that court. Therefore it is wrong and unjust that he dismissed the complaint.

4. As mentioned in the applicant's complaint letter, the forensic doctor Zaw Zaw Oo, who, as a part of the inquest, examined the dead body PR- 28 of Ko Aung Hlaing Win who died at No. 1 Military Security Unit, testified that there are 24 external wound and internal finding on Ko Aung Hlaing Win's body:

(1) two abrasions of 1.5cm x 1.5 cm near right eyebrow (2) 3.2 cm abrasion on right cheek-bone (3) 2 x 0.5 cm abrasion at inner part of lower lip (4) 3 x 2 cm bruises on upper side of right chest (5) 4 x 1 cm bruise at the front side of right shoulder (6) 1 cm bruise at top of right shoulder (7) 5 x 2 cm and 6 x 1 cm parallel bruises at inner part of lower right forearm and small abrasions beside them (8) 1 cm wound on the whole temporal region (9) 2.5 x 0.2 cm abrasion on right lateral chest (10) 1 cm diameter bruised abrasion at inner part of left arm (11) 1.5 x 1 cm abrasion and bruise on right --- (12) --- (13) 5 x 2 cm wound at the side of right upper thigh (14) 3 x 2 cm wounds on left and right knees (15) 6 x 2 cm bruise below left knee (16) 4 x 1 cm abrasion at front of lower part of right calf (17) small abrasions from 1 x 0.5 cm to 4 x 1 cm at the side of lower part of left calf (18) 6 x 5 cm bruise on right part of the back (19) 3 cm diameter bruise at right knee (20) 1 x 0.5 cm bruise at right little finger (21) 3.1 cm bruise on right lip (22) bruised abrasion at left knee (23) 5.1 cm and 4 x 1 cm bruises below and behind the left forearm (24) 3.1 cm bruise at left shoulder (and)

Internal findings

the head is extravasated and there is no special finding; skull bone remains normal and there is no fracture; no bleeding at the base of the brain; there is sign of atrophy at the brain and no special finding; no neck vertebral fracture and no neck bone fracture; there are signs of tonsillar abscess; there is tracheitis; no bleeding inside the chest; the right fourth rib fractured near the breastbone and muscle contused; the left fourth rib fractured near the breastbone in halves and there is bruise; both lungs have signs of chronic inflammation and coagulation, and no wound is found; heart condition is normal finding and chambers of the heart enlarged and some extravasation (bruises) are found outside the chambers; no internal bleeding inside abdomen; about half-digested food is found in the stomach and there are signs of infarction of small and large intestine.

Post-mortem examination No. 430/ 5 revealed that the victim died from chronic fatty liver and from tonsillitis and pneumonia.

Apart from the cause of death, as learned from the forensic doctor's testimony, the remaining facts revealed that grievous hurts are found on the dead body, with wounds and even fractured ribs. Therefore in the case of Ko Aung Hlaing Win died with grievous hurt assaulted by the accused, it is a negligence of duty that the victim was sent to be hospitalized only very late.

5. If Mayangone Township Court assumed the last part of forensic doctor's testimony for the inquest of Township Additional Judge (1) Court as a conclusive statement that Ko Aung Hlaing Win died form chronic disease, it is legally wrong to judge that the death is natural because the court had ignored the earlier part of the same testimony that mentioned that there are 24 wounds on Ko Aung Hlaing Win's body and internal wounds such as fractured ribs, which are found as immediate wounds.

6. If the death of Ko Aung Hlaing Win during detention at No. 1 Military Security Unit is merely assumed as a natural death caused from chronic disease, the accused could inform the family or return the death body to the family. Instead they cremated Ko Aung Hlaing Win's corpse behind the family's back and therefore it is obvious that they are accomplices who had committed crime of destroying the evidence or the dead body.

7. The applicant went to Kamaryut Township police station and reported the disappearance of Ko Aung Hlaing Win right on the very night he was arrested and led away. Then the responsible person Kamaryut Township police station, Pol. 2nd Lt. Hla Thoung, as he testified, came to know on 6 May 2005 that Ko Aung Hlaing Win had been arrested by Mayangone police station, and learned on 8 May 2005 that Ko Aung Hlaing Win died, therefore stopped enquiring the disappearance case. Therefore these accused had colluded in withholding (concealing) the truth although they are responsible to inform the family about the truth. It is obviously unfair (unjust) and incorrect that the court dismissed the lawsuit though there have been criminal actions to be taken with thorough inquiry.

8. After receiving the applicant's complaint, Mayangone Township Judge took the affidavit and promptly dismissed it in accordance with Section 203 of the Criminal Procedure Code by referring the abatement of Criminal Miscellaneous Case 433/ 2005- State versus Aung Hlaing Win. The responsible persons from Mayangone Township police station, the accused persons, and other witnesses had testified falsely before the court that Ko Aung Hlaing Win was arrested and led away from a shop at Kamaryut Township on the night of 5 May 2005. These testimonies could not indicate definite location of the arrest. The exact time of the arrest is about 7:30 pm on 1 May 2005 and the location is 'Lucky' restaurant in the quarter of Kamaryut Township where Ko Aung Hlaing Win lived. And there is evidence at Kamaryut police station of reporting disappearance that very night. There is no right to make counter questions to the one-sided testimonies at the court and the inquest was made by making use of that opportunity. The accused persons had testified by giving false statements, concealment and wrongful evidences and therefore it become obvious that they are the offenders and responsible persons for Ko Aung Hlaing Win's death within a few days.

9. Pol. 2nd Lt. Aung Kyaing, a surveillance from Mayangone police station who involved in arresting Ko Aung Hlaing Win on 5 May 2005, testified that Ko Aung Hlaing Win was sent to No. 1 Military Security Unit; the police had only put together a brief bio of Ko Aung Hlaing Win and could not continue the interrogation due to the bomb blast in Yangon on 7 May 2005; and later he learned that Ko Aung Hlaing Win died on the night of 8 May 2005. National security has been an important issue in for every country but personal security is an important one as well. It would be a negligence of a citizen's legal rights that the court easily judged Ko Aung Hlaing Win's death during interrogation as a natural death suffered from chronic disease.

Therefore I hereby submit as followed:

- (1) to admit this revision
- (2) to ask for and see the case files of Yangon Division Court's Criminal Revision Case No. 754/ 2005, Yangon Western District Court's Criminal Revision Case No. 160/ 2005 and Mayangone Township Court's Criminal Regular Case No. 960/ 2005.
- (3) To ask for and see the case files of Mayangone Township Court's Criminal Miscellaneous Case No. 433/ 2005 (State versus Aung Hlaing Win) as a related case file.
- (4) To pass an order to continue trying the lawsuit by canceling the order of Mayangone Township Court dismissing the Criminal Regular Case 960/ 2005 on 4 July 2005.

Respectfully,

(Signed)

Ma Hnin Sandar
Applicant

(Signed)

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1 September 2005

The disappearance of 15 political prisoners

On 25 March 2002, seven Myeik-Dawei United Front members, disappeared after being removed from Mergui Prison by Major Soe Hlaing of IB 265. Inside sources report that the prisoners were taken to an undisclosed location on Done Kyun Island. The seven political prisoners who have disappeared from Mergui prison include:

- 1) Name: (U) Khin Maung Cho
- 2) Name: (U) Shwe Baw
- 3) Name: (Ko) Tin San
- 4) Name: (Ko) Naing Oo (alias) Aung Naing
- 5) Name: (Ko) Kyaw Naing (alias) Kyaw Lwin
- 6) Name: (Ko) Than Zaw
- 7) Name: (Ko) Onh Lwin

At present, the whereabouts of these seven political prisoners remains unknown.

In July 2002, two NLD members were taken from Kawthaung prison by soldiers from IB 262 and IB 267 led by Captain Tin Maung Win, to Zar Dead Gyi Island and disappeared. On 17 September 2002, Sergeant Thein Myint, the commander of IB 224 and IB 262, took four other political prisoners from Kawthaung Prison and reportedly brought them to Makyonkalit Village, Lam Pake Island, Tenasserim Division.

The six political prisoners who have disappeared from Kawthaung prison include:

- 1) Name: (Ma) Cho Lwin (alias) Ma Lwin (Female)
- 2) Name: (Ko) Kyaw Aye
- 3) Name: (Ko) Kyaw Naing Soe
- 4) Name: (Ko) Tin Tun
- 5) Name: (Ko) Maung Shwe (alias) Bike Pu

6) Name: (Ko) Kyaw Myint

The fate of these six prisoners removed from Kawthaung Prison remains unknown.

In September 2002, two farmers, charged with having contacted members of political opposition groups, were taken into custody by members of MI 19 in Mergui, where they disappeared and there whereabouts remains unknown.

1) Name: (Ko) Thinn Pe

2) Name: (Ko) Ba Sein

AAPP, *Eight Seconds of Silence: the Deaths of Democracy Activists Behind Bars*, 2006.

Written interview with a former political prisoner

Prisoner released: 18 March 2010

Answers received: 22 April 2010

Original interview in English

This interview is included, here, as an example of an interview conducted by AAPP. Other interviews were conducted in person and held in Burmese with a translator.

1. In what manner were you arrested? Did you suffer any ill-treatment before being taken into custody?

I don't know detail why they (SPDC) can arrest me, however they arrested me because of my photo and political activities and information at the Rangoon Airport on September 3, 2009. I suffered no injuries during the arrest but I was psychologically ill-treated and threatened with words that made me frightened by the (Sa-Ar-Pa) Military Security Affairs (MSA) Military-Navy Security Officers, who were in charge of my case. [words such as : "you are in Burma now , even though you are US citizen"---"we can do whatever we want to you if we don't like your answers]

2. Where were you held after being arrested (the name and location of the institution, if known)?

First place was at Airport One of the (Sa-Ar-Pa) Military Security Affairs (MSA) Military-Air Force Security Office, next stop was at Mangaladon Airport Police Station and finally I arrived in a building but I could not see anything at all and was walked down into a room, which was my first interrogation room of the (Sa-Ar-Pa) Military Security Affairs (MSA).

3. What were you told by those who arrested and detained you?

One Air force officer Captain asked me to stop because his boss would like to personally ask me questions [...we talked back and forth about what he wanted to know and why he wants to meet me and so on...]. Then I had to follow a captain to their office and we waited for about 45 minutes to see someone, who was an officer from (Sa-Ar-Pa) Military Security Affairs (MSA) Military-Navy Security Officer... he started to call my name as Nyi Nyi Aung and then he told me about my colleagues, who are in prison. So I knew that the situation was not good and they finally told me that I was under arrest. I kept asking them to contact the US Embassy. I was handcuffed and my face covered with a cloth. Then I was taken by security officers and put in a car.

4. Did you have access to family visits; when was access first given; where did these take place, was someone else present during these visits?

I had no access to relatives for the first month of my arrest. After one month I had access to family. Every time they (my aunts) had to apply for jail visit at Insein Prison. They had to wait until they were granted permission by the authorities through US Embassy in Rangoon. Two jail guards and Special Branch (SB) officers were on both sides of the visitor room and we had to talk by phone and see through a glass window. The officers from SB and prison guards wrote down and recorded whatever we talked about during the 15 mins of visiting time, which took place in a small visitor room near the front door of Insein Prison.

5. Did you have access to a legal representative; when was access first given, how long after you were first taken into custody; how often was it given; where did visits take place; was someone else present during these visits?

I had access to a lawyer after my diplomat first visited and before I had the hearing at the special court in Insein prison compound. I had a meeting with my lawyers, U Kyi Win and U Nyan Win in the visitor's room, which was the same as all my meetings with my diplomat, and I only had two meetings with my lawyers during the entire period in Prison. No authorities were beside us during our meeting. So we discussed freely, however, we don't know whether the prison authorities set up an undercover sound recorder.

6. Did you appear before a court; when did this happen; how long after you were first taken into custody?

Yes, after about 45 days after my arrest...in mid October, 2009.

7. At any stage during your interrogation or detention were you transferred from one location to another? If so, do you know, where to, by whom, and how did you get there?

Yes, several places. I was moved by authorities (military security, special branch and prison officers). First interrogation rooms (Sa-Ar-Pa) Military Security Affairs (MSA), Aung Tha Pay compound located in Rangoon, which is an office of Special Branch under the Ministry of Home Affairs; Insein Prison (several buildings including Military Dog Cell) and Pyay prison in Pegu division, which is out of Rangoon.

8. Was any reason given for the transfer?

No... not at all whenever I was moved by security officers, SB, (Sa-Ar-Pa) and Prison guards.

9. How long were you interrogated for?

14 days... for 12 days I was not allowed to sleep at all, for 8 days no food; I was given drinking coffee for several days until I was given the first food on the 9th or 10th day.

10. What were the conditions of your interrogation cell?

First Interrogation Cell (room) at (Sa-Ar-Pa) Military Security Affairs (MSA) had one small light bulb and was 10 by 10 feet, no windows, one 3 by 6 feet wood frame and one entrance door. At the SB 5 storey building in Aung Tha Pay, I was interrogated, not in the cell but in a place close to their office on the ground floor of building; however it was covered with wooden frame partition.

11. Can you describe the routine in the place of interrogation?

Two or three interviewers (Authority/Officer from MSA and SB) who rotated every 4 hours, all day and night. Finally I had to sign and initial on all the writing paper of each interrogation group's record. Sometimes there were more than three or four interviewers in the room at a time.

12. How were you treated during detention or interrogation?

There were three kinds of treatments, depending on the person. Some officers believe in the order and system of junta, so they do as they are told by their boss, obey orders from the top so they would not get criticized, and pretend to work as good obedient servicemen in the department. They ask direct/straightforward questions and then get mad after they don't get what they want and this becomes a terrifying a situation. Others, treat you well and handle the case intelligently, so I felt free to answers. Some officers become a friend, exchange their point of view and ask my opinions.

13. What were you told or asked?

Who are your contacts and associates? Where do you hide all the material against the junta? How do you get in and out the country? What/Where/When/Who/Which and How do you get financial support? They often asked which country/governments/ NGOs did I receive support from? How much money did you get from organizations, what projects were you involved in, and any training received and so on? What is the purpose of your trip to Burma? Why did you comeback to Burma? Will you stay in Burma? Do you want to come back to the country after 2010 or later? And so on....

14. Do you have the details of those who interrogated you - name, rank or position of officer?

No... I don't think they gave me a real name.

15. Were you mistreated/tortured during interrogation?

Yes.

16. In what way were you mistreated/tortured?

My arms were tied tightly behind my back, sitting on a chair, which they would kick out from under me. They beat me on my back, shouted immoral words at me, and would punch me in the

face and nose and twist my arm. I was not allowed to sleep for 12 days and had no food for 8 days...

17. When was it done? Where did it occur? Who did it?

Since I was arrested for 12 days at Special Branch by Officers- Authorities from SPDC...

18. How often was it done?

5 --- 10 times during interrogation in the SB building...

19. Why do you think it was done?

To make you scared and worried and then you might give them what they want or you can't resist... some Officers-Authority want to oppress and aim to abuse, that practice has become culture/tradition for the top military leaders and all government servicemen especially in the department of military and home affairs.

20. Have you sustained any physical injuries during the course of your interrogation, detention and imprisonment?

Yes since mid December 2009. Pain in my back, where I was hit and leg pain, which I didn't get proper treatment for.

21. Were any medical personnel present during or after your interrogation period and while in prison, if so, did you receive any medical treatment, immediately or later, including on release?

After several requests from me and the US Embassy counsel, I did get a doctor's visit and sometimes by special request but I did not get enough medical treatment. So I still have to get treatment for the pain from caused by being tortured by SPDC.

22. Did you complain to anyone about your treatment or tell anyone in authority? What was the response?

I made complaints once I arrived at Insein and I did get any clear or direct response from the authorities. I had heard one message from an official that "we already informed to the top boss".

23. Were any other people held there; if so, how many; did anyone witness you being mistreated?

No., I was detained alone and I did not see anyone in prison.

24. Did you witness the mistreatment of any other prisoners?

Yes, when I was detained one day in a room of Special Branch interrogation center with one youth caledl Htun Lin Kyaw, who was a member AASYC, he was beaten in the interrogation by SB authorities.

25. Describe your cell in prison?

I was in several different cells. Most of the cells were 8 x 10 feet. There was usually a 3 x 6 feet entrance door and a small window at the top of the back wall. The building had not been renovated in many years. Most of the rooms had lime paint, dirty toilets with horrible smells, insects, and one plastic water bowl.

In Pyay Prison, I had no toilet. I had a plastic bowl to urinate in and a small bottle for water.

It was hotter and cooler than the outside natural temperature. One ½ inches by 2 feet ventilation in backside of the wall and an entrance door. Yes, day time natural light come thru ventilation window and one electric light bulb on the top of the ceiling.

26. What was the state of health of other prisoners?

From what I heard and from my own experience, none of them got proper medical treatment.

27. Were you held in isolation, for how long and in what manner?

I was in solitary confinement since I arrived in prison on September 17, 2009.

28. Were there any facilities for personal hygiene; where and how did go to the toilet or bathe; what was the general hygiene of the place like?

Not at all good, see above, and not good sanitation system. No cleanliness at all.

29. How often and how much food and water were you given; what was the quality like; who provided it; did you have to pay for food or other provisions?

Enough cook-rice and one bowl of curry is twice a week in the evening-dinner, bean soup 5 days at lunch, vegetable soup 2 days at lunch and 5 days for dinner.

30. Was there any opportunity to leave your cell and, if so, for how long and how often?

Sometimes, during visiting time (30-45) mins. Walking Exercise is entitled for 1hour daily --- but I was not allowed to in No. (1) Building in Insein and Pyay. They did not allow me to exercise when I was detained at the military dog cell and at 10 cell new building {for Women Political Prisoners and Special Prisoners}. I was only allowed to exercise on 15 occasions in the entire time, since I was arrested by the authorities.

31. Did you have to pay any bribes for any facilities or treatment during interrogation and imprisonment were and was a bribe requested at any time?

NO, Not At All...