



Assistance Association for Political Prisoners (Burma)

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**Assistance Association for Political Prisoners (Burma)
Submission to the
United Nations Universal Periodic Review Of
Burma/Myanmar**

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1. Executive Summary

The Assistance Association for Political Prisoners (Burma) otherwise known as AAPP, provides information on Burma's lack of compliance with human rights laws regarding political prisoners. This includes torture; the right to life, liberty and security of person and the judicial system; restrictions on activists and the right to health and an adequate standard of living.

2. Analysis

Over the last 5 years since the previous UPR submission, there have been few improvements in Burma's failing judicial system. Activists and journalists remain detained arbitrarily and sentenced to jail for exercising their freedom of expression

There has been a rise in ethnic conflict, particularly in the Arakan state. Recent conflict between Arakan Army and the Tatmadaw have led to a dramatic increase in political prisoners detained by both sides of suspicion of association with the other side. The army, policy and ethnic armed groups are complicit in human rights violations against Burma's citizens. We have seen the rise of deaths and torture during interrogation directly linked to this conflict. Schools in Arakan State have become detention centres. Masses of civilians are detained and forcefully interrogated and often tortured for information related to the conflict and then are released with no apologies or reparations. The expulsion of the Rohingya in 2017 was a mass human rights violation, that the Gambia has accused a genocide at the ICJ, and Rohingya continue to be detained arbitrarily for attempting to travel around Burma.

There has also been a deterioration in the situation of freedom of expression, with many journalists being arrested for criticism government officials, army and politicians and private companies. There remains no official recognition of political prisoners by the government, nor no reparations act to deal with the long-term legacy of imprisonment. At the end of June 2020, there was a total of 641 political prisoners in Burma.

Burma's judicial system remains outdated and continues to prescribe harsh sentences with hard labour that are not befitting a democratic state. Many people are arrested under politically motivated cases, and judges are often influenced by the army and government. Until there is independence of the judiciary and a reformed justice system, these sentences will continue, and Burma's people will continue to have their political and civil rights restricted and infringed upon.

3. The Right to Health, Adequate Standard of Living & Prison Overcrowding

In prison there is an environment of impunity that fosters the violation of human rights for political (prisoners) and criminal (general) prisoners. Burma still has dire issues when it comes to providing humane conditions and adequate standard of living to its prisoners. One major problem in the Burmese prison system is that its legal framework is outdated and unsubstantial, as it does not provide the safeguards required by international law and still addresses issues related to colonial times.¹

Conditions inside prisons are extremely harsh because of inadequate access to medical care and basic needs. This is exacerbated by overcrowding, which is fueled by pre-trial detention. There are 93 prisons and labor camps in the country. Burma holds approx. 100,000 prisoners (including convicted and pre-trial detainees) in a capacity space of 66,000, resulting in a 139% increase in overcrowding (including convicted and pre-trial detainees). Overcrowding is one of the biggest issues as it drains the already limited state resources.² Moreover, it not only affects health systems in prisons and sanitation infrastructure for prisoners and staff, but also limits the ability of staff to create a safe and secure environment, as well as prevents them from ensuring prisoner separation according to separate classes. Such conditions contribute to inhumane and degrading treatment of prisoners and unacceptable working conditions, showcasing that these issues are strongly related to human rights violations.

Pre-trial detention is overused in many situations, and hindered by delays in the criminal justice process, lack of legal access or inability to afford bail. According to AAPP, it is estimated that 1 in 10 prisoners are pre-trial detainees in Burma and often the detention

¹ AAPP (2016) Prison Conditions in Burma and the Potential for Prison Reform.

² AAPP (2018) Prison Overcrowding and the Need for Urgent Reform.

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period is extended, in particularly for political prisoners.³ For instance, in 2015, 127 people were arrested for protesting against the national education law in Letpadan, of which 53 remained in detention for over a year till they faced trial. It has also been noted that in Burma pre-trial detention is used to weaken political opposition and activists. For example, bail is often denied to political prisoners.⁴

There are grave issues relating to the implementation of dietary needs, sanitation systems or basic medical care. Health conditions are worsened in prisons because of the over-representation of society's most vulnerable and marginalized groups, such as people with health and psychological issues, and people performing high risk activities like drugs or prostitution.⁵ The situation in prisons in Burma is dire as it lacks the proper health provisions and is plagued by illnesses like malaria, tuberculosis or dysentery. Furthermore, there are very high numbers of prisoners infected with HIV/AIDS because of sexual abuse and use of syringes.⁶ The lack of sufficient medical staff also plays a key role in the degrading health conditions in Burma's prisons, as according to estimates there is one doctor for every 7,314 prisoners⁷ and 80 nurses when there is a need for at least 194.⁸

It becomes evident that there is a clear linkage between prison health conditions, adequate living standards with overcrowding, as it is the one element that is recurrent in all issues presented in this report. Also, it falls hand in hand with the violation of human rights and fundamental rights of prisoners, convicted and detained, in Burma.

Prisons across the world have become dangerous breeding grounds for the coronavirus. The coronavirus pandemic threatens the health of thousands of inmates in the prisons across the country. Social distancing is impossible inside prisons. COVID-19 therefore poses significant risks to prisoners across Burma.

AAPP calls on the Government of Burma/Myanmar to:

³ AAPP (2016) Prison Conditions in Burma and the Potential for Prison Reform.

⁴ US State Department (2016)

⁵ AAPP (2016) Prison Conditions in Burma and the Potential for Prison Reform.

⁶ US State Department (2016)

⁷ AAPP (2011) Submission to UN Periodic Review of Burma.

⁸ AAPP (2018) Prison Overcrowding and the Need for Urgent Reform.

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- Allow independent investigations into any cases of human rights violations and impartially prosecute anyone responsible for death, torture or any inhumane or degrading treatment or punishment.
- Ensure those detained are done so legally and not arbitrarily. Immediately release all prisoners being arbitrarily detained.
- Provide adequate reparations or compensation to former political prisoners and torture victims.
- Ensure the prison reform in line with Standard Minimum Rules for the treatment of the prisoner (SMR).

4. Torture and death in prisons and detention centers

According to AAPPs information, since 2017, 50 people have been tortured while in police custody, primarily during the interrogation phase, 13 of these prisoners died due from this torture. Whereas AAPPs information found that in 2019, 16 were people were killed in military detention in Arakan State

Torture continues to be widely practiced by both military and law enforcement personnel throughout Burma. Over the past 5 years, former and current political prisoners have continued to offer AAPP and other human rights groups detailed accounts on the nature and extent of torture they received while in police or military custody. Beatings, deprivation of food, water and sleep, and being made to stand in stress positions for long periods of time with nails under one's heels are just a few forms of torture political prisoners often report experiencing.⁹

Since the mass expulsion of Rohingya into Bangladesh in 2017, cases of civilian torture and death at the hands of Myanmar's military and security forces have primarily occurred in areas where clashes between ethnic armed groups had recently occurred.

Over the last few years cases of civilian torture and death at the hands of Burma's military and security forces have been concentrated in ethnic controlled areas. In these areas

⁹ AAPP(Burma), *The Systemic use of Torture by Totalitarian Regimes in Burma & the Experiences of Political Prisoners*, November 2019, p. 11-12.

military abuses including arbitrary arrest, torture, extrajudicial killings, and enforced disappearances overwhelmingly target indigenous minority ethnic groups.

In October 2019, Amnesty International documented military atrocities against ethnic Shan, Kachin, Lisu, and Ta'ang civilians in the northern Shan State. With many ethnic armed groups present throughout Myanmar, men of fighting age belonging to ethnic groups represented in these armed parties are heavily targeted by military officials for detainment, interrogation, and often torture under the assumption that they have knowledge about the said ethnic armed group or are affiliated with it. One incident included a Kachin man who was detained while fishing and tortured by army soldiers in northern Shan. He recalled that soldiers asked if he was a member of the Kachin Independence Army, and when he said no, they tortured him. The man described being kicked, punched, forced to remove his clothes, having a knife held to his throat and being made to squat with a grenade in his mouth.¹⁰

This consistent pattern of violence in blatant violation of universal human rights proves that the military has been either unable or unwilling to reform its culture of violence and impunity.¹¹ It is not uncommon for hospitalization, or death to occur after such encounters with the military as a result. While some are released after interrogation and abuse in their villages, some are taken to detention sites and held incommunicado for weeks at a time—during which torture is also used to extort information and confessions from prisoners. In August of 2019 one Rakhine man was detained and held incommunicado for over a week during which he was allegedly tortured with electric shocks until he confessed to having ties with the AA, for which he is now facing charges.¹²

The police have also been implicated in cases of torture and death of civilians in custody, although impunity for officers responsible has been less assured. In March 2018 four police officers from Poe Laung police station in Irrawaddy Division were arrested for the torture of two burglary suspects after holding them incommunicado for two weeks and releasing them with various injuries, some permanent. The police chief was among the officers who tortured the men in various ways; including hanging them upside down for hours at a time

¹⁰ Amnesty International, *Myanmar: Military atrocities 'relentless and ruthless' in northern Shan State*, 24 October 2019. Available at: <https://www.amnesty.org/en/latest/news/2019/10/myanmar-military-atrocities-relentless-ruthless-northern-shan-state/>

¹¹ *ibid*

¹² UN News, *UN experts decry torture of Rakhine men and boys held incommunicado by Myanmar's military*, 3 September 2019. Available at: <https://news.un.org/en/story/2019/09/1045442>

and burning their genitals with melted plastic and cigarettes.¹³ Legal procedures for interrogation sessions do exist, but clearly are doing little to deter policemen from committing human rights abuses, as similar cases- including those resulting in death- are alarmingly prevalent.

In June of 2019 a villager died in Mandalay's Obo Prison, after he was detained by police following a local protest. Prison authorities claim 38-year-old Ko Tun Myint Win died of high fever and alcohol withdrawal syndrome, but injuries found on his body by his family indicate that he sustained several serious injuries to the head while in custody. Cases like this in which the police clearly played a role in the death of a detainee but refuse to take responsibility are sadly common.

Large-scale infrastructure and development projects in resource-rich areas, along with continuing land confiscations throughout Myanmar have also been drivers of conflict and instability.

AAPP calls on the Government of Burma/Myanmar to:

- Immediately honor their commitment to ratify the United Nations Convention against Torture. Prohibit the use of torture unconditionally especially as a means of interrogation.
- Prohibit confessions gained through torture being used in a court of law.
- Provide a system that allows prisoners to report torture and implement a process for redressing this.
- Ensure adequate physical and psychological healthcare for all prisoners during incarceration and on release.
- Ensure prison facilities are kept to a certain standard to ensure they are not contributing to the poor record of health that prisoners face.
- Allow independent monitoring of prison conditions and implement changes suggested by these bodies.

¹³ Salai Thant Zin. *4 Policemen Arrested Over Alleged Torture of Suspects in Irrawaddy Region*, 28 March 2018. Accessed at: <https://www.irrawaddy.com/news/burma/4-policemen-arrested-alleged-torture-suspects-irrawaddy-region.html>
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5. Freedom of Expression and Restrictions on Activists

As conflict in Arakan State has intensified over the past three years, Myanmar authorities have prohibited international journalists and investigators from entering the region, except on heavily regulated and monitored trips organised by the state. Meanwhile government officials have also proven increasingly intolerant of criticism; taking measures to criminalize journalists, artists and dissidents and stifle freedom of the press and freedom of expression.

In 2018, several members of the poetry troupe, Peacock Generation, were arrested for wearing military uniforms and criticizing the Tatmadaw in satirical street performances. Authorities responded by filing a slew of charges against the performers in township courts throughout Rangoon, which are ongoing. Three members were charged with online defamation under Section 66(d) of the Telecommunications Law after posting videos of their performances on social media, and five poets were charged under Section 505 of the Penal Code for unlawful public statements.¹⁴

Prominent journalist and editor-in-chief of Myanmar Now, Ko Swe Win was charged with defamation for critical coverage of public figures. In 2017 he was charged under the Section 66(d) of the Telecommunications Law for suggesting that vocal Buddhist-nationalist monk, U Wirathu be removed from the monkhood for publicly extolling the murder of a human rights lawyer and legal advisor to the National Democratic League, U Ko Ni.¹⁵ Another high-profile case was the trial and sentencing of two Reuters journalists, Wa Lone and Kyaw Soe Oo (released on 7th May 2019). Each were sentenced to seven years in prison under the Official Secrets Act; a colonial era provision, for their investigation into military abuses in Arakan State.¹⁶

¹⁴ Tint Zaw Tun. *Jail terms pile up for Myanmar street performers*, 18 February 2020. Accessed on: <https://www.mmtimes.com/news/jail-terms-pile-myanmar-street-performers.html>

¹⁵ Paris, Janella. *'Truth, Justice, Love': Ko Swe Win on journalism in times of repression'*, 11 September 2019. Accessed at: <https://www.rappler.com/world/regions/asia-pacific/239684-profile-ramon-magsaysay-awardee-2019-ko-swe-win-myanmar>

¹⁶ Frontier Myanmar, *'Secrets' case verdict aimed at intimidating journalists, says EU*, 3 September 2018. Accessed at: <https://frontiermyanmar.net/en/secrets-case-verdict-aimed-at-intimidating-journalists-says-eu>

Students, human right, and lands rights activists continue to face similar charges of defamation, and unlawful public announcements and/or assembly. In some cases, these groups have been sued for actions as minor as filing complaints about local government or military actions- usually related to a crime committed against them by these officials such as land confiscation. Police have also continued to be heavy handed and undisciplined when attempting to control public demonstrations and protests. In Arakan and Chin States, residents have been left without access to the internet for over a year.

AAPP Calls on the Government of Burma/Myanmar to:

- Immediately amend The Peaceful Assembly and Peaceful Procession Act to bring it in line with international standards on freedom of expression.
- Review outdated oppressive laws routinely used to stifle and arrest political activists. Provide clear information as to the arrests and charges of political activists.
- Unconditionally release all political prisoners, journalists, activists and end ongoing trials of political detainees. Ensure access to legal representation for all detainees.
- Immediately honor their commitment to ratify the International Covenant on Civil and Political Rights.

6.Conclusion

The Government of Burma/Myanmar has largely failed to implement the recommendations made in the previous submission in 2015.

Independent prison monitoring hasn't been allowed. Prisons haven't been updated or maintained at an adequate level of hygiene. Oppressive laws have neither been amended or abolished Proper independent investigation into deaths and injuries in custody are not taking place and those committing human rights violations continue to exist in impunity, and the UNCAT and ICCPR remain unsigned.

The government must act to halt these human rights violations and to ensure all violators are accountable and brought to justice. They need to galvanize political will be bring around large change to Burma, to ensure its civilians live in peace. Despite the restrictions and

limitations of the 2008 constitution, the government still has agency to improve the human rights situation. It is a governments responsibility to ensure the protection of its civilians, yet Burma's government has failed to do this. Only widespread change will ensure it doesn't fail again in the future.

Many of the same recommendations remain from 2015 and even 2011 submissions. This is indicative of the lack of adequate reform on Burma and shows how far is needed to go.

AAPP