

## **Universal Periodic Review on Burma (Myanmar)**

### **Working Mechanism/methodology/consultation process**

1. This paper was drafted in consultation with and is jointly submitted by Burma Campaign Australia (a national network comprising of Democracy for Burma Action Group, Australia Burma Network, Canberra Network for Democracy in Burma, Burma Solidarity Group and Burma Campaign Sydney), Union Aid Abroad APHEDA, Burma Economic Watch (Macquarie University), Australian Karen Organisation, Burmese Rohingya Community in Australia, the Burma Office (Australia) and the Australian Council of Trade Unions.

### **Legal and institutional framework in the promotion and protection of human rights**

2. The Burmese military junta, the State Peace and Development Council (SPDC), continues to systematically violate human rights in Burma and using Burma's national laws in this process. Abuses have been extensively documented by a succession of the UN Special Rapporteur on the situation of human rights in Burma/Myanmar<sup>1</sup>, including the current Rapporteur Tomas Ojea Quintana. Many domestic laws are used by the SPDC to suppress the population, whilst others deny citizens of Burma their basic human rights.
3. Suppressive domestic laws that violate human rights in Burma include:
  - The State Protection Law 1975 - "The Law to safeguard the State against the dangers of those desiring to cause subversive acts". This law was amended in 1991 increasing the time someone could be held without arrest, trial or sentencing from 3 to 5 years.
  - Unlawful Association Act 1908 – Anyone deemed to be involved or connected with an organisation that is declared unlawful by the President of the Union, can be imprisoned.
  - The Printer and Publishers Registration Law 1962 – All publications in Burma are subject to censorship and prior to publication must be approved by the Press Censorship Board. Individuals who violate this law can be sentenced to 7 years imprisonment and/or fined 30,000 Kyat (US\$50)<sup>2</sup>.
  - Emergency Provision Act 1950 – individuals seen to be disrupting the morality and stability of the country can be sentenced to up to 7 years imprisonment.
  - Video Law 1985 - individuals making, copying or distributing unauthorised videos, including ammeter videos can be sentenced to up to 3 years imprisonment.
  - Law 5/95 – this law prohibits individuals from initiating discussion about the national convention in Burma, which was tasked with creating guidelines for the drafting of the 2008 constitution. Violators of this law can be sentenced to 20 years imprisonment.
4. It also must be noted that there is no independent judiciary in Burma. These laws are applied arbitrarily and there is no avenue for a free and fair trial.
  - Basic human rights in Burma are denied and actions by the state violate these rights. The Burmese military receives approximately 40% of Burma's national budget, whilst health and education combined receive less than 3%. Rights will continue to be denied in Burma, particularly the right to food, education and health care, until adequate national resources are allocated to address these issues. The denial of the rights, particularly restrictions on

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<sup>1</sup> Herein referred to as the Rapporteur

<sup>2</sup> In 2006, Burma's per capita gross domestic product (GDP) was only \$281 US per annum, making it one of the ten poorest countries in the world, and the poorest outside Africa. An estimated 95 percent of the population now lives on less than US\$1 a day, with 90 percent surviving on less than 65 cents.

- movement, which is applied to humanitarian workers, has resulted in increased impoverishment of vulnerability to human rights abuses of communities.
5. Citizenship is routinely denied for members of ethnic minority groups, particularly the Rohingya. Members of the Rohingya and other ethnic minority groups are not issued with identification cards, denying them citizenship and making them vulnerable to other abuses, such as restriction on movement. Some members of minority groups were issued with a form of identification for voting in the 2008 constitutional referendum, however, these cards were not a formal recognition of citizenship.
  6. Property rights in Burma continue to be denied. Under the Land Nationalisation Act of 1948 amended in 1953, the state maintains ownership of all lands. Whilst the SPDC offers land rights and resources to private businesses, peasants and small farmers are denied similar rights. This must be viewed in the context that over 75% of the population relies upon the agricultural sector for their livelihoods. This sector is dependent on land and property rights being respected and violations of such rights indirectly violate people's economic rights and their right to food. The violation of property rights also includes the confiscation of land by the Burmese army, with little or no compensation for this loss.
  7. There is no independent judiciary in Burma, nor any meaningful rule of law, resulting in thousands of individuals being arbitrarily detained in Burma. In 2009 the UN Working Group on Arbitrary Detention released an opinion stating that Aung San Suu Kyi's continued detention was illegal under both international and Burma's domestic laws. Previous statements and an opinion released in 2010 declared Suu Kyi and other political prisoners continued detention a violation of international law. In the 18 months in the lead up to 2010, the SPDC sentenced 477 dissents to jail terms of up to 104 years. There are over 2,100 documented political prisoners in Burma, including 21 Burmese nationals arrested and imprisoned for distributing aid following Cyclone Nargis.
  8. The SPDC have employed various tactics that violate international humanitarian laws. The Burmese army has been targeting civilians during military offensives in eastern Burma for decades, in direct violation of international humanitarian law. Since January 2010 4,100 villagers in eastern Burma have been displaced,<sup>3</sup> adding to the current displaced population in eastern Burma of nearly half a million people.<sup>4</sup> The Burmese army has placed civilians in harms way by forcing them to act as human shields and minesweepers for the Burmese army.<sup>5</sup> International humanitarian law states that the State abstain from physically or mentally torturing or punishing adversaries. Whilst civilians are not traditionally viewed as adversaries, the actions of the SPDC suggest anyone who opposes or questions the SPDC is seen as an adversary. State-sanctioned physical abuses of civilians by the Burmese army and other State authorities have been extensively documented. The authors of this paper recommend these acts be viewed as violations of international humanitarian law.
  9. The SPDC imposes restrictions that prohibit ethnic languages being taught in public schools, even as a second language and has denied ethnic communities permission to hold cultural celebrations. This is a violation of Article 27 of the UN Human Right Declaration.

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<sup>3</sup> ALTSEAN Burma, The SPDC's Crimes Continue in 2010, April 2010

<sup>4</sup> Thailand Burma Border Consortium, Protracted displacement and militarisation in Eastern Burma – Survey 2009, 2009

<sup>5</sup> Karen Human Rights Group, Unsafe return: Threats to human rights and security for refugees leaving Tha Son Yang District, Jan 27<sup>th</sup> 2010

10. The 2008 constitution will come into effect after the 2010 election. Articles 443 and 445 in Chapter XIV of this constitution gives immunity to military personnel and civil servants from prosecution for crimes, including gross human rights violations, they may have committed prior to the election.
11. The Election Laws, Party Registration Laws and the 2008 constitution deny the Burmese population the right to choose government representation (Article 21, UN Human Rights Declaration). The laws and constitution restrict who can stand for election. All past and present political prisoners, including Aung San Suu Kyi, are excluded from standing from election.

**Implementation and efficiency of legal and institutional framework**

12. The SPDC has signed up to a number of international human rights conventions, including Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child, ILO Convention on Forced Labor and the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. Despite the accession of these treaties and conventions, genuine space and structures to support the implementation of these international norms does not currently exist in Burma and the State actively breeches them. There is no genuine promotion of these conventions to grassroots communities, and actions of the Burmese army create additional barriers for individuals and communities to access procedures relating to these treaties of conventions.
13. The SPDC has established a number of parallel national institutions to these conventions and treaties. These structures that do exist are closely linked to the SPDC and do not invite full participation of stakeholders or individuals. Space to set up alternatives to these state-backed structures is very restricted, and effectively does not exist. These state-sponsored structures do not accurately reflect the intentions behind the treaties and conventions and many of these institutions have received heavy criticisms about their limited effectiveness from human rights groups, exiled Burmese communities and democracy supporters.
14. A number of SPDC-sponsored organisations have been established to address women's issues in Burma. These organisations have been heavy criticised for not understanding or representing the concerns of average women in Burma, despite claiming to do so. In the Shadow of the Junta a report prepared by Women from Burma states laws relating to sexual and gender-based violence have not been revised since 1860 and that no laws exists that specifically address domestic violence. Sexual and gender based violence against women and girls, especially those belonging to ethnic groups, has been extensively documented. The report also states: *“There is no indication that recommendations made by the 22nd CEDAW Committee in response to the country’s initial report, were acted upon, distributed or publicized in any way.”*
15. The 1993 Child Law has seen national, divisional/state and township child rights committees established. Despite the establishment of these committees, complaints about violations of child rights continue, particularly the recruitment of children into the armed forces by the Burmese army and use of child labour. There has been criticism that these committees do not provide avenues for people to make complaints, particularly the forced

recruitment of children in to the army, or assist families in locating children who have reported to have been forced into the military.

16. The SPDC violates both domestic and international laws relating to forced labour. Order No 1/1999 prohibits “the use of forced labour”. Steve Marshall, liaison officer for the ILO to Burma said the majority of forced labour is adults and children pressed into working for the army on infrastructure projects. Mr Marshall stated: “There is no evidence of any change in attitude to the use of forced labour by the military”.<sup>6</sup>
17. It must be noted that Burma does not have an independent judicial system. A clear complaint process for victims or witnesses of human rights violations to redress abuses does not exist, particularly in border areas where the presence of the state is often limited to Burmese army personnel. Ad hoc process do occurs wherein complaints are lodged by victims, witnesses and community leaders with members of the Burmese army. However, communities who have engaged in this ad hoc process have reported it to be unsatisfactory, with, for the most part, no action taken on complaints, and in some cases reporting the incident has resulted in increased vulnerability of the victim.

#### **Cooperation with human rights mechanism and stakeholders**

18. There are no genuine human rights body in Burma where citizens and stakeholders can engage with the SPDC, or redress complaints of abuses of rights. Individuals who defend human rights are routinely harassed, arrested, imprisoned and tortured.<sup>7</sup> Representatives of the SPDC continue to reject criticisms and efforts by the international community to engage with the SPDC on Burma’s human rights situation. The International Labor Organisation undertook a commission of inquiry into forced labour in Burma in 2000 and in 2008 a Supplementary Understanding was reached between the ILO and SPDC, wherein offices of the ILO in Burma could receive forced labour complaints from individuals this was extended in February 2009 for another 12 months. However, a number of complainants and their legal advocates remain in detention, for having submitted forced labour complaints under this mechanism. SPDC representatives have irregularly participated in review processes by various UN mechanisms, such as the CEDAW country review. These processes have provided opportunities for other stakeholders to submit shadow reports and evidence. Request from the Rapporteur to visit the country have often been refused by the SPDC. Burma was the last country in ASEAN to agree to a non-binding ASEAN Human Rights Charter.

#### **Identification of achievements, best practices, challenges and constraints**

19. A significant constraint for the improvement of human rights in Burma is the system of governance in the country. Without a significant change in the governance structure, such as making the government accountable to the public there is little indication that the human rights situation in Burma will improve.
20. Other constraints include (see section two for more explanation):
- Lack of accountability for human rights
  - Continued state sponsored human rights abuses.

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<sup>6</sup> “ILO says forced labour ‘reducing’”, Democratic Voice of Burma, July 2<sup>nd</sup> 2010, <http://www.dvb.no/news/ilo-says-burma-forced-labour-reducing/10077>

<sup>7</sup> Assistance Association for Political Prisoners (Burma), <http://www.aappb.org/>

- Restriction, imprisonment and harassment of humanitarian assistance and workers
- Allocation of national budget expenditure

**Key national priority, initiatives and commitment to overcome the challenge**

21. Key national priorities for the State include:

- Immediately and unconditionally release *all* documented and undocumented political prisoners in Burma – this would be a symbolic gesture that sends a clear message for the people of Burma and the international community that the SPDC is committed to respecting human rights and that space being created for possible discussions for national reconciliation.
- Cessation of violence, hostilities and violation of human rights against civilian populations in Burma – this can be achieved through the negotiation of ceasefire agreements between the SPDC, non-state actors and a third party. Ceasefire agreements should also include a mechanism where the third party can freely monitor the implementation of these agreements and an avenue for civilians to participate in this monitoring process.
- Immediately repeal laws and lift restrictions that violate international law and internationally accepted human rights norms.
- Lifting of restrictions on humanitarian aid workers, particularly in relation to travel and accessing extremely vulnerable and needy communities and releasing aid workers who are imprisoned.
- Fully cooperate with international human rights monitoring organisations, institutions and representatives, especially the International Labor Organisation and the Rapporteur.
- Enter into dialogue with the International Atomic Energy Agency regarding Burma’s alleged nuclear program and sign on to any international treaties, conventions or agreements that now apply to Burma.
- Enter into tripartite dialogue with the National League for Democracy led by Aung San Suu Kyi and ethnic nationalities as a foundation for national reconciliation and genuine democracy to occur.

**Expectation in terms of capacity building and technical assistant:**

22. Currently bilateral aid cannot be provided to Burma without empowering the SPDC. Unless there is a significant change in the political climate in Burma, which results in the creation of an environment genuinely conducive for human rights to be respected, we do not recommend large scale capacity building or technical assistance programs be provided to Burma. Limited space currently exists for Embassies in Burma to offer training programs to civilians and we encourage other Embassies to explore these opportunities, particularly with regards to human rights and democracy trainings. Countries providing weapons and dual-capability products and assistance should stop.

**Recommendation**

23. The UN Human Rights Council supports the recommendation of the Rapporteur and calls for the establishment of a UN Commission of Inquiry into crimes against humanity and war crimes.
24. The UN Human Rights Council supports the opinion paper of the UN Working Group on Arbitrary Detention and calls for the release of Aung San Suu Kyi and all political prisoners in Burma.